

THE
Analysis of the Law:
BEING A
SCHEME,
OR,
ABSTRACT,
Of the several
Titles and Partitions
OF THE
LAW of ENGLAND,
Digested into Method.

By Sir *MATTHEW HALE*, Kt.
late Lord Chief Justice of the Court
of KING'S BENCH.

The *Second Edition* corrected: With the
Addition of an Alphabetical TABLE.

In the *SAVOR*:

Printed by *E. Nutt*, (Executrix of *J. Nutt*, Assignee of
Edw. Sayer Esq;) and sold by *D. Browne, J. Tenson*,
G. Strahan, W. Taylor, J. Bowyer, H. Clements, T. Be-
cker, B. Lintott, W. Mears, R. Gosling, J. Pemberton,
J. Hooke, J. Browne, C. King, J. Osborne and T. Var-
nam, E. Nutt, L. Sweeting and F. Clay, Booksellers in
London and Westminster. 1716.

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THE

Author's PREFACE.

IN the ensuing TRACTATE
I shall make an *Essay* of Re-
duction of the several Titles
of the *Law* into Distributions and
Heads, according to an *Analy-
tical Method*. But the Particulars
thereof are so many, and the
Connexions of Things so various
therein, that as I shall beforehand
confess that I cannot reduce it to
an exact *Logical Method*, so I
must declare that I do despair at
the First, yea, the Second or
Third *Essay*, to reduce all the
(considerable) Titles thereof un-
der this Method: But many

A 3 Things

The Preface.

Things will be omitted, and possibly therefore, as they shall occur to my Memory, will perchance be disorderly shuffled in under such of the Distributions as may not be so proper for them, or at least inserted brokenly, without their just Dependence, till upon a Second or Third, or, perhaps, further *Essay*, the Scheme or Abstract may be entirely new fram'd.

However, the following *Essay* will do thus much Good, *viz.*

First, It will discover that it is not altogether impossible, to much Attention and Labour, to reduce the Laws of *England* at least into a tolerable *Method* or *Distribution*.

Secondly,

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Secondly, It will give Opportunity both to my self and others, as there shall occur new Thoughts or Opportunities, to rectify, and to reform what is amiss in this, and to supply what is wanting ; whereby, in Time, a more *Methodical System* or *Reduction* of the Titles of the Law, under Method, may be discover'd.

Thirdly, That altho', for the most Part, the most *Methodical Distributors* of any Science rarely appear subtile or acute in the Sciences themselves, because while they principally study the former, they are less studious and advertent of the latter ; yet a Method, even in the *Common Law*, may be a good Means to help the Memory to find out *Media* of Probation, and to assist in the Method of Study.

The Preface.

And altho' the Laws of *England* are generally distributed into the *Common Law*, and *Statute Law*, I shall not distribute my *Analysis* according to that Method, but shall take in and include 'em both together, as constituting one *Common Bulk* or *Matter* of the Laws of *England*. Nor shall I confine my self to the Method or Terms of the *Civil Law*, nor of others who have given general *Schemes* and *Analysis's* of Laws; but shall use that Method, and those Words or Expressions that I shall think most conducive to the Thing I aim at.

The *Laws* of this Kingdom do respect either,

1. *Civil Rights*; or,
2. *Crimes* and *Misdemeanours*.

The Preface.

This I shall substitute as the general Matter of the Laws of *England*, not troubling my self with Criticisms or Propriety of Words, in which Respect the very Word *Civil* includes also Matters *Criminal*, because Civil Constitutions give the Denomination of Crimes, and the Rules and Method of their Punishment; but it shall be sufficient that I use such Expressions as either are in themselves proper to express the Thing I mean, or that by my Usage and Application of them, I render them serviceable to that Purpose and End.

I shall therefore divide the Laws of this Kingdom, in relation to their Matter, into Two Kinds:

i. The

The C O N T E N T S.

1. The *Civil Part*, which concerns *Civil Rights*, and their *Remedies*.

2. The *Criminal Part*, which concerns *Crimes* and *Misdemeanors*.

And these, to avoid Confusion, I shall dispose into several *Sections*.

And *First*, I begin with the *Law* as it relates to *Civil Matters*.

T H E

T H E

C O N T E N T S.

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The Analysis of the Law

THE
ANALYSIS
OF THE
LAW.

SECT. I.

Of the Civil Part of the Law (in general.)

THE Civil Part of the Law concerns,
1. Civil Rights or Interests.
2. Wrongs or Injuries relative to those Rights.
3. Relief or Remedies applicable to those Wrongs.

Now all Civil Rights or Interests are of Two Sorts :

1. *Jura Personarum*, or Rights of Persons.
2. *Jura Rerum*, or Rights of Things.

The Civil Rights of Persons are such as do either,

1. Immediately concern the Persons themselves : Or,
2. Such as relate to their Goods and Estate.

B

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The Analysis of the Law.

As to the Persons themselves, they are either,

1. Persons Natural ; Or,
2. Persons Civil or Politick, *i. e.* Bodies Corporate.

Persons Natural are consider'd two Ways :

1. Absolutely and simply in themselves
2. Under some Degree or Respect of Relation. *Vide Sect. 2.*

In Persons Natural, simply and absolutely considered, we have these several Considerations, *viz.*

1. The Interest which every Person has in himself.
2. Their Capacities or Abilities (which respect their Actions.)

I.

1st, The Interest which every Person has in himself, principally consists in three Things, *viz.*

1. The Interest he has in the Safety of his own Person. And the Wrongs that reflect upon that, are, 1. Assaults. 2. Affrays. 3. Woundings.
2. The Interest he has in his Liberty, or the Freedom of his Person. The Injury whereto, is *Duress*, and *Unlawful Imprisonment*.
3. The Interest he has in his Name and Reputation. The Injury whereto, is Scandal and Defamation.

As to the other Interest of Goods and Estate, though in Truth they have a Habitude, and are under some Respect to the Person; yet because they are in their own Nature Things separate and distinct from the

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the Person, they will more properly come in under the *Jura Rerum*. Vide Sect. 23, &c.

2dly, The Capacity that every Person has ; which is a Power that the Law variously assigns to Persons, according to the Variety of certain Conditions (or Circumstances) wherein they are, either *To take*, or *To dispose*. II.

And under this Head, we have,

First, the Capacities themselves, which are especially Two ;

1. Capacities which a Man has in his own Right.

2. Capacities which he has in *auter Droit*, or another's Right.

Now Capacities which a Man has in his own Right, are either,

1. To acquire or take.

2. To alien or transfer.

And both these are either,

1. Of Things personal.

2. Of Things real.

The Second Kind of Capacities are in *auter Droit*, another's Right ; as, Executors, Corporations, *Cestuy que Use*, &c. Whereof hereafter.

Secondly, The various Conditions (or Circumstances) of Persons, with Relation to those Capacities, consisting of,

1. Ability.

2. Non-ability.

And all Persons are (presum'd) in Law able in either of those former Capacities (of Taking, or Disposing,) which by Law are not disabled : And those that are so

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disabled come under the Title of *Non-ability*, though that *Non-ability* is various in its Extent, *viz.* To some more, to some less; (as in the several Instances following.)

1. Aliens : Here comes in the Learning of Aliens, as Naturalization, Denization, &c.
2. Attainted of Treason or Felony ; here of Attainders.
3. Persons outlawed in Personal Actions.
4. Infants ; here of the Non-ability of Infants.
5. *Feme Coverts* ; here of their Disability.
6. Ideots and Lunatics ; here of that Learning.
7. Persons under some illegal Restraint or Force, as *Durefs*, *Manafs*.
8. *Villeins* ; (now antiquated.)
9. Bastards ; and here of Legitimation.

Bacon's
Hist. Part
1. p. 88.
Vide § 14.

Vide § 18.

S E C T. II.

*Of the Relation of Persons, and the Rights
thereby arising.*

NOW as to Persons consider'd in respect of Relation, the Rights thereby arising are of three Kinds, *viz.*

1. Political.
2. Oeconomical.
3. Civil.

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The Political Relation of Persons, and the Rights emergent thereupon, are,

1. The *Magistrate*.
2. The *People* or *Subject*.

The Magistrate is either,

1. *Supream*.
2. *Subordinate*.

The Supream Magistrate is either,

1. Legislative : *The Parliament*. (With whose Rights I shall not here intermeddle.)
2. Executive : *The King*.

And inasmuch as the King is by the Law the Head of the Kingdom and People, the Laws of the Kingdom, *eo Intuitu*, have lodg'd in him certain Rights, the better to enable him to govern and protect his People. And although under this Consideration I shall be constrained to take in and include many Rights of Things ; yet because they do belong to the King under this Relation, *as King*, and I have no other Place or Division so apt to dispose of them as this, I shall here bring them in together.

And the Rights that belong to the King, *as King*, are of Two Kinds :

1. Such Rights as concern his Person.
 2. Such Rights as concern his Prerogative.
- (Of each of these in their Order.)

S E C T. III.

Of such Rights as relate to the King's Person.

THE Rights which more immediately concern the King's Person, include these Two Things, *viz.*

1. The Manner of his Title, or Acquest thereof.
2. The Capacities of the King.

I

1. The Manner of Acquest of the Regal Title or Dignity, is either,

1. A Lawful Acquest; or,
2. An Unlawful Acquest.

An Hereditary Acquest of Title is by the Municipal Laws and Constitutions of this Kingdom, when the Crown descends to the next of Blood, according to the Laws and Customs of *England* in Cases of Hereditary Descents.

And here all those Rules that have been observ'd in the Law touching this Point, may be inserted.

2. An Unlawful Acquest of the Regal Title is,

1. *By Usurpation*; when a Subject by Wrong invades the Crown, or intrudes upon him that has the Lawful Right thereto; as was done by King *Stephen*, King *John*, *Henry* the Fourth, and *Richard* the Third.

And

And herein may be considered what Power the Law allows to such an Usurper, and what it denies him.

2. *By Conquest*, when a Foreigner either, *Victoria in*

1. Vanquishes the King, as *William the Ragem.*
First did *Harold*.

2. Or Subjects the Kingdom; which *Victoria in*
never happened with respect to *Eng- Populum.*
land since the *Romans*.

The King's Capacity (as he is King) is of II.
Two Kinds.

1. His Political Capacity,

2. His Natural Capacity.

As to his Political Capacity; he is a sole Corporation, of a more transcendent Nature and Constitution than other Corporations, whereby he is discharged from many Incapacities, which in the Case of other Persons would,

1. Obstruct his Succession, as Alienee, &c.

2. Disable his Actions, as Infancy; or
Coverture in the Case of a Queen, &c.

Then as to his Natural Capacity, as he is King: The great Concerns of Government requiring a great Assistance to the King's Natural Capacity, the Laws and Customs of the Kingdom have furnished him with divers assisting Councils, which are of Two Kinds, *viz.*

1. His Ordinary Councils.

2. His Extraordinary Councils.

His Ordinary Councils are Three, *viz.* I.

1. *Privatum Concilium*, His Privy Council.

And here may be taken in, all such Laws

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as direct, bound, or limit the Privy Council, either,

1. In Matters of Publick Interest touching the King.

2. Or in Matters of Private Interest between Party and Party.

1. *Legale Concilium*, or his Council at Law ; which consisting of the Lord Chancellor, Lord Treasurer, Lord Privy Seal, Judges of both Benches, Barons of the *Exchequer*, Master of the Rolls, &c. is the King's Council of Advice in Matters of Law.

3. *Consilium Militare*, His Council in Time of War, or Publick Hostility, *viz.*

1. In Matters at Land, } Earl Constable.
 } Earl Marshal.

2. In Matters at Sea, the Lord Admiral.

The Jurisdiction of whom, *Vide post*, p. 14.

I. The King's Extraordinary Councils are of Two Kinds :

1. Secular or Temporal.

2. Ecclesiastical or Spiritual.

The King's Extraordinary Secular Councils are, 1. *The House of Peers* ; 2. *The House of Commons* ; in their Capacity of Informing, Advising, and Counselling the King in Matters that are,

1. Publick Benefits.

2. Publick Grievances.

And here all the Learning of Parliaments properly comes in, *viz.* The Persons of whom it consists ; the Members of each House ; the Manner of their Summons ; the Places that send Members to the House of Commons, and how to be Qualify'd, how Elected,

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Elected, and the Qualifications of the Electors; what the Privileges of Parliament are; the Method of passing Bills, &c. and how Adjourn'd, Prorogu'd or Dissolv'd.

The Extraordinary Ecclesiastical Councils are,

1. The Upper House } Of Convocation.
2. The Lower House }

And hither may be referr'd all Laws and Constitutions touching the Convocation.

S E C T. IV.

Concerning the Prerogatives of the King.

HAVING shewn you what Rights belong to the King's Person, we come now to those Rights which concern his Prerogatives.

And those Prerogatives are of Two Kinds :

1. Direct and Substantial Prerogatives.
2. Incidental and Relative Prerogatives.

The Direct and Substantial Prerogatives may be distributed under Three Branches, I.
viz.

1. *Jura Majestatis, vel Summi Imperii, i. e.*
The Right of Dominion.
2. *Potestas Jurisdictionis, vel Mixti Imperii, i. e.* The Power of Jurisdiction.
3. *Census Regalis*, or the Royal Revenues.

Which

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Which I shall subdivide according to their Order.

- II. See the Incidental and Relative Prerogatives in *Sect. 9.*
-

S E C T. V.

Concerning the King's Rights of Dominion or Power of Empire.

THE *Jura Summæ Majestatis*, or Rights of the King's Empire or Dominion, are either,

1. In relation to his own Subjects ; or,
2. In relation to Foreigners.

In relation to his own Subjects, they respect,

1. Times of Peace.
2. Times of War.

And *First*, Of the Rights of Dominion, which respect Times of Peace.

These Rights, though they are exercisable also in Times of War and Insurrection, yet seeing they do more immediately respect the Well-ordering of a Kingdom, and preserving its Peace and Tranquillity, I shall here insert them : And though they are various in their Kinds, and some of them seem to refer to the Powers of Jurisdiction, yet I shall endeavour to reduce them to these Eight Heads following, *viz.*

1. His Rights in relation to the Laws.
2. In relation to Tributes and Publick Charges.
3. In

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3. In relation to the Publick Peace of the Kingdom.
4. In relation to Publick Injuries and Oppressions.
5. In relation to Publick Annoyances.
6. In relation to his constituting the great Officers of the Kingdom.
7. In relation to his ordering and regulating Trade and Commerce.
8. In supervising, regulating, and supplying the Defects of others.

1st, In relation to the Laws of this Kingdom :

I.

1. In the Making of Laws.

2. In the Relaxation of Laws.

As to the making Laws, his Right consists in Three Particulars :

1. In the making of Statute Laws, or Acts of Parliament ; for though the King cannot make such Laws himself without the Consent of both Houses of Parliament, yet no Law can be made to bind the Subject without him.
2. In the making of Spiritual Laws, or Canons Ecclesiastical, which, if kept within the Bounds of Ecclesiastical Cognizance, are admitted here in this Kingdom : As these Laws cannot be made without the King's Consent, so neither can the King ordain such Laws without the Clergy in Convocation assembled.

So that in both these Kinds of Laws, the King's Power of Making, is only a Qualified and Co-ordinate Power. But,

3. In

The Analysis of the Law.

3. In making and issuing of Proclamations, which in some Instances are to be taken for Laws, as in calling Parliaments, declaring War, &c. Herein the King's Power is more absolute, as being made by him alone; yet the King cannot by these introduce a new Law, so as to alter or transfer Properties, or impose new Penalties or Forfeitures beyond what are establish'd by Statute or Common Law.

And as to his Power in the *Relaxation* of Laws already made, it respects either,

1. *Temporal Laws*; which being enacted by Parliament, the King cannot abrogate or annul such a Law: But in some Cases of Penal Laws, he may, in respect of Persons, Times, or Places, sometimes dispense with them.

Here may come in all the Learning touching Dispensations and *Non obstantes*.

2. *Ecclesiastical Laws*, wherein the King has a greater Latitude of Dispensation; for if such Laws are not confirm'd by Parliament, the King may revoke and annul them at his Will and Pleasure.

And here all the Learning of *Commendams*, *Dispensationes ad Plura*, and all Ecclesiastical Defects and Incapacities dispensed with by the King, fall under Consideration.

2^{dly}, In relation to Tributes and Publick Charges, wherein is considered,

- I. What

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1. What Charges he cannot impose without Consent of Parliament : And for this, see the Statute *De Tallagio non concedendo*, and divers other Statutes, restraining new Impositions.
2. What Charges he may impose without Consent of Parliament, *viz.* *reasonable Tolls*; as Paage, Pontage, Murage, &c.

And here may be consider'd the Lawfulness of Tolls, &c.

And of Exemptions } { By Prescription.
from them, } { By Charter.

3^{dly}, In Relation to the Publick Peace of the Kingdom.

1. In preserving it from being broken :

1. By Inhibitions from going or riding armed.
2. By erecting or razing Castles and Fortifications.
3. By prohibiting such Erections by others.

2. In restoring it when broken :

1. By suppressing Affrays and Tumults with Force.
2. By a legal Prosecuting and Punishing such Affrayors.

4^{tly}, In relation to Publick Injuries and Oppressions.

1. By restraining them by Imprisonment.

And herein consider by whom, where, when, and how, this may be done.

2. By prosecuting them in the King's Name ;

1. By Indictment.

2. By Information.

3. By

3. By Pardoning them, as to the King's Prosecution.

And herein, of Pardons, what may be pardoned, when, how, and by what Words, &c.

5thly, In relation to Publick Annoyances: For the King has the great Care thereof; and the Prosecution and Punishment of the same, as far as they are publick, is by Law committed to him.

And this is commonly exercised about Bridges, Ferries, Highways, &c.

Though these Particulars, and some of the foregoing, more regularly come in under *Pleas of the Crown, and Criminal Matters*, in the Second Part of this Treatise.

6thly, In relation to his constituting great Officers, viz.

1. *Civil Officers*, as Lord Chancellor, Treasurer, Privy-Seal, Earl Marshal, Lord Admiral, Judges, &c.

And here may be consider'd,

1. The Manner of their Constitution.
2. Their Office, Business, or Employment.

2. *Ecclesiastical Officers*, as Archbishops, Bishops, Deans, Archdeacons, &c.

And here may come in,

1. The Manner of their Constitution, as their Election, Consecration, Investiture, Restitution of Temporalities, &c.
2. The Exercise of their Office, viz. How far the King may enlarge, limit, or restrain it.

7thly,

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7thly, In relation to the Regulation of Trade and Commerce.

§ Coining New Money.

1. His Right of } Authenticating Foreign Coin.

And here come in all Matters touching the Variety and Legality of Coins; and of Contracts, Orders, and Instructions, relating to it.

2. His Designation of Places of Publick Commerce;

As Ports, Fairs, Markets.

And here of such various Learning as relates thereto;

} By Charter.

As how they are created } By Prescription.

What is a good Grant thereof; and what not, if granted to the Prejudice of another; and of the Writ *Ad quod dampnum*.

Also what is a Sale in Market Overt, and of the Effects thereof in altering Properties, &c. And of Forestalling, as when a Market may be forestalled, and when not.

3 His Right in instituting and regulating the Instruments of Publick Commerce, with respect to

Undue } Weights.
 } Measures.

Excessive Prices.

&c.

8thly, In relation to his supervising, regulating, and supplying the Neglects or Defects of other Magistrates;

1. Of

The Analysis of the Law.

1. Of Civil Magistrates, } By Writs of Error.
 } By Writs of Appeal, &c.
2. Of Ecclesiastical Magistrates; by Devolution.

1. Of Causes by Appeal to him.

2. Of Presentations, by Lapſe.

Thus far of the King's Prerogatives, with respect to Peace: Next, of those that relate to War and Commotions.

These may be term'd *Jura Militiæ*, and consist,

1. In raising of Men.

2. In building of Forts.

And regard either,

1. Domestick Insurrections of his Subjects: Or,

2. Foreign Hostilities of Enemies.

1. With Regard to his Subjects,

1. He may raise Men to suppress their Insurrections by Force.

2. He may punish them by Martial Law during such Insurrection or Rebellion, but not after it is suppress'd.

2. In relation to Foreigners: These Rights are to be consider'd, *viz.*

1. The Power of denouncing War, and concluding Peace.

And herein Leagues and Truces may be consider'd, with their various Effects.

Also what shall be said an Enemy.

2. The Authorizing of,

1. *Publick Envoys*:

2. *Embassadors*: And,

3. *Plenipotentiaries*.

3. The Power of granting or issuing Letters of Marque and Reprizal.

And herein consider the Inducements, Ends and Effects thereof.

4. The Power of granting Safe Conducts.

And here of the Uses and Effects thereof.

S E C T. VI.

Of the Potestas Jurisdictionis; or, The King's Right or Power of Jurisdiction.

Hitherto of the *Jura Summi Imperii*, or Rights of Empire or Dominion: Now we come to the *Jura mixti Imperii*, or *Potestas Jurisdictionis*, wherein the King generally acts by his Delegates, Officers or Representatives.

This *Potestas Jurisdictionis*, or Power of Jurisdiction, seems principally to be of Two Kinds, *viz.*

1. Extraordinary.

2. Ordinary.

The Extraordinary Power of Jurisdiction residing in the King, though for the most Part exercised by his Officers and Ministers, consists in Three Things;

1. In commanding home any of his Subjects from Foreign Parts;
2. In prohibiting any of his Subjects from going beyond the Seas,

1. By

The Analysis of the Law.

2 *Inst.* 47.
48.

1. By Proclamation.
2. By the special Writ of *Ne exeat Regnum*.
3. In commanding any of his Subjects to undertake an Office or Dignity within the Realm.

And here the Learning touching these may be inserted, as where, when and how these Commands or Instructions are to issue; and when, and in what Cases not; what the Penalty if not obeyed, and in what Manner inflicted.

The King's Ordinary or Usual Power of Jurisdiction, is of Two Kinds,

1. Ecclesiastical.
2. Temporal or Civil.

I. Ordinary Ecclesiastical Jurisdiction, or rather Jurisdiction touching Ecclesiastical Matters. As this anciently belong'd to the Crown, but was for some Time usurped by the Pope, so by the Statute of 26 H. 8. it was again restored to the Crown.

And this is of Two Kinds;

1. Voluntary Jurisdiction.
2. Contentious Jurisdiction.

I. Ecclesiastical Voluntary Jurisdiction may be exercised by the King in several Instances relating to Ecclesiastical Matters: As,

1. In convening Ecclesiastical Assemblies, as Synods, Convocations, &c.
2. In such Acts of Voluntary Ecclesiastical Jurisdiction, wherein the King has a Power to concur with the Ordinary.

3. And

3. And in many Cases, to do what the Ordinary cannot do; as in constituting Appropriations, uniting of Churches, erecting Ecclesiastical Benefices or Dignities, dispensing with Irregularities, exempting from Ecclesiastical Jurisdiction, with relation to his Free Chapels; in pardoning Crimes relating to Ecclesiastical Jurisdiction, and the Execution of their Sentences, wherein a private Interest is not concern'd; in suspending the Effects of their Sentences (even) in Causes criminal; and an infinite more of the like Nature.

This is a large Field, full of many Titles, and of various Learning.

2. As to Ecclesiastical Contentious Jurisdiction: 'Tis true, the King meddles not with it as to the Exercise thereof; for that would be both an Injury to the Excellency of his Majesty, and also a Wrong to the Subject in depriving them from their Right of Appeal, if there be Cause for the same; for if the King should be the Judge upon the first Instance, the Party cannot afterwards appeal.

And therefore, in Cases of Ecclesiastical Contentious Jurisdiction, his Power is exercised by Way of Interposition, in Three Instances, viz.

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1. By his Power of committing
- | | |
|---|---------------------------------|
| } | <i>Jurisdictionem Ordinari-</i> |
| | <i>am, Et</i> |
| | <i>Jurisdictionem Delega-</i> |
| | <i>ram,</i> |

To Commissioners of his own Nomination under the Great Seal.

2. By suspending their Proceedings; which is done, not by his immediate Authority, but the Administration of his Temporal Courts, who, by a Power derived from the King, suspend their Proceedings by Prohibition, if there be Cause.

3. By the last Devolution of Appeal; wherein, though the King himself does not judge in Person, yet he appoints Commissioners under the Great Seal to receive and determine the Appeal.

And thus much of the King's Ecclesiastical Jurisdiction.

Now as to the Temporal or Civil Jurisdiction of the King: This, as well as his Ecclesiastical Jurisdiction, is of Two Kinds, *viz.*

1. Voluntary.
2. Contentious.

I. His *Voluntary Temporal Jurisdiction* consists,

1st, In erecting of Courts by his Great Seal, so that they be Courts of the Common Law; for a Court of Equity cannot be now erected but by Act of Parliament.

2^{dly}, In the *Erection and Collation* of,

1. Juris-

1. Jurisdictions.
2. Regalities.
3. Liberties.
4. Franchises.
5. Exemptions.
6. Privileges: And,
7. Dignities. *Viz.*
 1. In erecting and collating of *Jurisdictions*, *viz.*
 1. Exempt Jurisdictions.
 2. Non-exempt Jurisdictions.
 1. *Exempt Jurisdictions*; as the Jurisdiction of Counties Palatine, Jurisdiction not to be impleaded *extra Muros*, Conusance of Pleas, &c.
 2. *Non-exempt Jurisdictions*; as Leets, Torns, Power to hold Pleas, &c.
 2. In the Collation of *Regal Powers*, as of coining Money, pardoning Offenders, constituting Justices, &c.
But see how far these are resumed by Stat. 28 H. 8.
 3. In the Collation of *Liberties*, as Forests, Parks, Chases, Warrens, Ferries, Gaols, Return of Writs, Ports of the Sea, Fairs, Markets, Tolls, and many others of like Nature.
 4. In the Collation of *Franchises*, as creating of Free Boroughs, giving Power of sending Burgeses to Parliament, creating and dividing Counties, erecting of Corporations.
 5. In *Exemptions* of all Kinds; as from Suit at the County, Törn or Hundred Court; also from serving on Juries,

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and from paying Tolls, Customs, Subsidies, &c.

6. In the Collation of *Privileges*; as *En-denization of Aliens*, *Privileges against Arrests and Imprisonment*, and *Enfranchising Villains by his Presence formerly*.
7. In the Creation and Collation of *Dignities*; as *Dukes, Marquisses, Earls, Viscounts, Barons, &c.*

And thus far of the King's Temporal Voluntary Jurisdiction.

II. As to the King's *Temporal Contentious Jurisdiction* before mentioned: This is not exercised by the King in his own proper Person, for the Reasons before given in the Head of *Ecclesiastical Contentious Jurisdiction*; for though Instances have been of the King of *England* sitting in the Court of *King's Bench*, and though the Style of that Court is *Coram Rege*, and the Chief Justices there were anciently called *Locum Tenentes Domini Regis*, yet when the King sate there in Person, the Judgment or Opinion of the Court was always given by the Justices.

The King always exercises this *Contentious Temporal Jurisdiction* by his Judges or Justices, which he creates or constitutes Four Ways:

1. By *Writ*, as the Chief Justice of the *King's Bench*.
2. By *Patent*, as the ordinary Judges of the establish'd Courts at *Westminster*.
3. By *Commission*, as Justices of *Oyer and Terminer*, *Gaol-delivery*, *Affize*, and *Nisi prius*. *Vide infra*.
4. By

4. By Charter, as the Judges in Courts of Corporations and inferior Courts.
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S E C T. VII.

Concerning the Censu Regalis; or, The King's Royal Revenue.

I Come now to speak of the *Censu Regalis*, or the King's Royal Revenue: And here I shall not say much of his Houses, Manors, Lands, Fee-Farms, or Free Rents, because those are common to him with other Persons; but I shall only speak of his Royal Revenue, or *Censuales Prærogativa*, and that *Censu Regalis*, of which the Law takes Notice as of common Right belonging to him, as he is King.

And the Kinds of those Revenues are Two, viz.

1. Ecclesiastical.

2. Temporal.

His Ecclesiastical Revenues are of Two Kinds;

1. Extraordinary.

2. Ordinary.

1. His *Extraordinary* Revenues Ecclesiastical are those Subsidies and Tenths, and other Ecclesiastical Supplies granted occasionally by the Clergy in their several Convocations.

Note, In those Occasional Supplies the Law takes Notice, That the King has an

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Inheritance, though depending upon the Bounty of his Subjects, and therefore he may grant an *Exemption* from them; as likewise he may do to particular Persons from Temporal Subsidies hereafter mentioned for the same Reason.

2. His *Ordinary* Revenues Ecclesiastical are likewise of Two Kinds;

1. Constant or Annual.

2. Contingent or Casual.

Constant or *Annual* Revenue Ecclesiastical, is his Tenths of Ecclesiastical Benefices, Extraparochial Tithes, and some other Things of Ecclesiastical Nature, that possibly might come to him by the Dissolution of Monasteries.

Hither may be referr'd Proxies, (Procurations,) Pensions, Tithes, Appropriations, &c.

The *Casual* or *Uncertain* Ecclesiastical Revenues are,

1. His First-Fruits of all the Ecclesiastical Benefices; settled in him by Stat. 26 H. 8.

2. The Temporalities of Bishops; which though they are in the Crown by reason of the King's Right of Patronage, yet I may call them *Spiritual*, because they are Part of the Revenues of an Ecclesiastical Corporation: And on the same Reason,

3. *Corrodies* also; as being of the Foundation of Ecclesiastical Corporations.

4. And

4. And also *Lapse* it self ; which though it be not reckoned a Revenue, because not to be sold, yet it is equivalent to a Revenue ; for it yields a Preferment for his Clerk.
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S E C T. VIII.

Of the King's Temporal Revenue.

I Come now to that Part of the King's *Census Regalis* which I call *Temporal* : And this is likewise of Two Kinds ;

1. Extraordinary.

2. Ordinary.

1. The *Extraordinary Temporal Revenue* may be further divided into,

1. The Ancient.

2. The Modern.

The *Ancient Temporal Extraordinary Re-* Rushw.
venues are of several Kinds, as, Coll. Vol. 1.

1. Hidage, Cornage, Scutage. p. 481.

2. Aids : *Ad Corpus redimendum, Ad filium primogenitum Militem faciendum, Ad filiam primogenitam maritandam.*

The *Modern*, are the Subsidies and Supplies granted by Parliaments.

2. The *Ordinary Census Regalis Temporalis* is also of Two Kinds, *viz.*

1. Common.

2. Special.

1st, The

The Analysis of the Law.

I.

1st, The *Common Censur Regalis Temporalis* is either Certain or Casual.

1. *Certain*; as his *Rents* and *Demefns*, which are either,

1. Newly acquir'd by Dissolution, Surrender, Exchange: Or,

2. Ancient; as, *Antiqua Dominia Coronae*, i. e. Ancient Demefns.

Here insert what they were, what the Tenants Privileges were, &c.

2. The *Casual Ordinary Temporal Revenues*; as,

Profits of his Tenures, and the like.

II.

2^{dly}, The *Special Ordinary Censur Regalis*; which in its Original was annex'd to the Crown for the Support of the Kingly State and Dignity; and this is of several Kinds, viz.

1. *Purveyance*, or Buying at the King's Price; which is since taken away.

2. *Prisage*, i. e. One Tun of Wine for every Ten Tuns laden in every Ship; and from Aliens, in lieu thereof, Two Shillings for every Tun.

Here add who are exempted from *Prisage*, &c.

3. *Customs*, great and small, *Magna & Antiqua Custuma*.

4. *Bona vacantia*, as Waifs, Strays, *Wreorum Maris*.

5. *Royal Fish*, as Whale and Sturgeon.

6. *Bona Forisfacta*, vel *Confiscata*; as,

1. *Bona Felonum*, vel *Felonum de se*.

2. *Bona Fugitivorum*.

3. *Bona Utlagatorum*, & in *Exigendis possitorum*.

7. *Royal*

7. Royal Escheat ; as
 1. *Terræ Normannorum.*
 2. *Terræ Alienigenorum.*
 3. *Terræ Proditorum.*
8. Royal Mines.
9. Maritime Increases, by reason of *Iluvio* ^{2 Inf. p.} 576, 577.
Maris.
10. Profits of his Courts ; as,
 1. His Fees of the Seal.
 2. Fines upon Original Writs.
 3. Post-Fines, or Fines *pro Licentia Concordandi.*
 4. Fines for Misdemeanours, and those are either *Common* or *Royal.*
 5. Common Fines on Villis, Townships, or Hundreds, for the Escape of Murderers, Felons, and the like.
 6. Amerciaments.
11. Custody of Ideots and Lunaticks Lands : *Vide* § 1.
The latter upon Account, not so the former.
12. Profits of his Forests.
13. Treasure Trove.

S E C T. IX.

Of the Relative Prerogatives of the Crown.

THUS far have I gone with the *Direct* or *Substantive Prerogatives* of the Crown : Now I come to those that are *Dependant* and *Relative*, which are of several Kinds, *viz.*

The

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The Prerogatives :

1. Of his Presence, in relation to Breach of the Peace, Seizure of Villeins, Arrests, &c.
2. Of his Possessions: That no Man can enter upon him, but is driven to his Suit by Petition. And here of Traverse, *Monstrans de Droit*, *Amoveas Manus*, &c. when, in what Cases, and how to be brought.
3. Of his Demesns. The Rights and Exemptions of *Ancient Demesn*. *Vide supra*, p. 26.
4. Of his Grants, how to be expounded.
5. Of his Suits; as,
 1. In what Courts, and Election of Courts.
 2. In what Writs.
 3. In his Process.
 4. In his Pleadings.
 5. In his Judgments.
 6. In his Executions.
6. Of his Debtors and Accomptants, in their Debts and Accompts.
7. In relation to his Treasure, and of his Officers employed therein.
8. In relation to Persons related to him; as,
 1. His *Queen Consort*; and here of her *separate Capacity*, her *Revenue*, *Aurum Reginae*.
 2. His Children; his eldest Son, eldest Daughter, &c.
 3. His Ministers attending his Person, or his Courts, or his publick Service.

And

And herein,

1. Of Privilege.
2. Of Protection.

And thus I have gone through the *Analysis*, or Scheme of the King's Prerogative ; by which (though it be but hastily and imperfectly done) may be seen, of what vast Dimension this one, though great, Title of the Law is, and what a vast Number of great and considerable Titles fall into it ; insomuch, that if I should pursue any one of these subordinate Titles, though it might seem but narrow, and here express'd but by a Word or Two, as *Wreck, Waif, Toll, Custom, &c.* there is not one of these, but in the bare *Analysis* of it, and of the several Incidents and Rivulets that would be found to fall into it, would grow as large as this brief Abstract of this great Head has done, and it may be much larger, as the *Capillary Veins* and *Arteries* in the Body take up more Room and Extension than the great Trunks, out of which their small Ramifications are drawn.

S E C T X.

Of the Subordinate Magistrates: And First of Ecclesiastical.

THUS far of the *Supream Magistrate*, and of the *Rights* annex'd to him by reason of his Office : The next Consideration

tion is of *Subordinate Magistrates*, which I shall consider in the same Method as the former, *viz.* not only in their own Persons, but also in those *Rights* they have annex'd to them by reason of their *Offices* or *Magistracy*.

All *Subordinate Magistracy* is derived from the *Supream*, either immediately or mediately, either by express *Grant* from him, or by something that implies or supposes it in its *Original*, *viz.* *Custom* or *Prescription*: And this *Magistracy* may be distinguish'd into these *Kinds*, *viz.*

1. *Magistrates Ecclesiastical.*

2. *Magistrates Temporal.*

I. *Ecclesiastical Magistrates*: Such namely as have a *Jurisdiction* annex'd, are of *Two Kinds*;

1. *Ordinary.*

2. *Extraordinary.*

The *Ordinary Ecclesiastical Magistrates* are also of *Two Kinds*, *viz.*

1. Such as have *Ecclesiastical Jurisdiction* annex'd to their *Places*, and *Offices* primarily and originally, as *Archbishops*, *Bishops*, *Archdeacons*.

2. Such as have their *Jurisdiction* by *Substitution* and *Delegation* from them, as *Chancellors*, *Officials*, *Surrogates*, *Vicars General*, *Guardians of the Spiritualities*, &c.

The *Extraordinary Ecclesiastical Magistrates* are certain *Persons* appointed by the *King's Commission* for hearing and determining *Matters of Ecclesiastical Co-*

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nuzance (the King, being supream Head in Matters Ecclesiastical). And this is either,

1. In the first Instance, such as were anciently *Commissioners in Matters Ecclesiastical*, either *ad universalitatem Causarum*, or in particular Cases.
2. In the second Instance, as *Commissions of Appeal*, and of *Review*.

And because those Magistrates have Ecclesiastical Jurisdiction annexed, here might be brought in the whole Particulars thereof, and among 'em principally these, *viz.*

1. In Matters of Crime, as Adultery, Fornication, Incest, &c.

2. In Matters of Interest, as,

1. *De Testamentis & Administrationum Commissione*. (Here of that Matter.)

2. *De Matrimonio & Divortio*: And here, who may marry, what is a lawful Marriage; the Kinds of Divorces, and their Consequences or Effects;

1. In Dissolving, or not.

2. In Bastardizing, or not.

3. In Cases of general *Bastardy*, when written to by the Temporal Courts.

4. In Cases of Tithes.

5. In Cases of Dilapidations.

6. In Cases of Ability of Clerks, Institution, Destitution or Deprivation, Suspension, Sequestration, &c. of Ecclesiastical Benefices.

7. Of

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7. Of the Difference between *Jurisdiction Voluntary*, as Admissions, Institutions, Probate of Wills, Commission of Administrations, and *Contentious Jurisdiction*.
8. Of their Sentences and Coercion, namely *Excommunication*, and the Effects thereof, in reference to,
 1. Disabling the Party.
 2. Imprisoning the Party.
9. The Method of restraining the Exceeding of their Jurisdiction,
 1. By Prohibitions.
 2. By *Præmunire*.
10. The Means of Redressing their Errors,
By *Appeal*: The Method and Effects thereof.
11. Of the several Courts belonging to their several Jurisdictions; as,
To Archbishops, their Court of Audience, Prerogative Court, and Court of Arches.
To Bishops, their several Consistories, and Chanceries, their Chancellors, &c.
12. Their Power of Visitation. To what it extends :

To Corporations	{	Spiritual.
		Lay.
When to Hospitals.		
When to Universities, &c.		

S E C T. XI.

Concerning Temporal Magistrates.

THE Temporal Magistrates are of Three Kinds, viz.

1. Military.

2. Maritime.

3. Civil, or Common Law Magistrates.

1. The *Military* were the Constable and Marshal, whose Power (as far as the Common Law takes Notice of it) consisted of Two Parts, viz.

1. Of a Kind of *Mixtum Imperium*, which principally was for the Preservation of Peace, and Ordering the Army in Time of War.

2. A Jurisdiction belonging to their Court-Martial; Whereof before.

2. The *Maritime* is the Admiral, and those deriving Power under him. Their Power likewise consists of,

1. A Kind of *Mixtum & Subordinatum Imperium* over the Officers and Seamen, especially in the King's Fleets and Yards.

2. *Potestatem Jurisdictionis*, in relation to Matters arising upon the High Sea.

And here of the Admiral's Jurisdiction, and the Remedy if he exceeds in it;

1. By Prohibition.

2. Action on the Stat. 2 H. 4.

D

3. The

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3. The *Common Law*, or *Civil Magistrate*; I mean such as are instituted either by the *Common Law*, by Statute, or by Custom: These, in relation to Things Temporal, are various.

And because these Magistrates consist not only of natural Persons, as they are such, but of natural Persons constituted in some Degree of Empire, Power, or Jurisdiction; here will aptly fall in the Diversity, the Jurisdiction and Powers of the several Courts, and of the Officers, (both Ministerial and Judicial. These, though I shall not prosecute in all their Branches and Extents, yet I shall give some short Account of them, viz.

The Subordinate Civil Magistrates are of Two Kinds:

1. Such as have not only a *Civil Power*, which I may call *Potestatem mixti imperii*, but also have a Power of Jurisdiction.

2. Such as have a Kind of *Civil Power* or *Mixtum Imperium*, but without Jurisdiction. *Vide Sect. 12.*

1. As to the former:

The Persons that exercise this Power or Jurisdiction, are called Judges, or Judicial Officers.

The Places or Tribunals wherein they exercise their Power, are called Courts.

And the Right by which they exercise that Power, is call'd *Jurisdiction*.

This

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This therefore yields us these Considerations, viz.

The Courts themselves, what they are, how they are constituted.

What their Jurisdiction is, and the Extent thereof.

Who the Judges are, and how made, whether by Commission, Charter, Prescription, Custom, or by Course of the Common Law.

1. *The Courts are of Two Kinds;*

1. Courts of Record.

2. Not of Record.

First, Of Courts of Record, there is this Diversity, viz.

1. Supream.

2. Superior.

3. Inferior.

1st, *The Supream Court of this Kingdom* is the High Court of Parliament, consisting of the King, and both Houses of Parliament.

2^{dly}, *Those Courts I call Superior*, are indeed of several Ranks and Degrees, and every one nevertheless are to keep within the Bounds and Confines of their several Jurisdictions by Law assign'd them. And they are,

1. More Principal.

2. Less Principal.

1. *The more Principal are,*

The Courts of the Lords House in Parliament.

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The

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The Great Courts at }
Westminster; as, }
 } *Chancery.*
 } *King's Bench.*
 } *Common Pleas.*
 } *Exchequer.*

Justices Itinerant, }
 } *Ad Communia*
 } *Placita.*
 } *Ad Placita Fo-*
 } *resta.*

2. The *less Principal* are such as are held,
 } *Goal-delivery.*

1. By Commission. } *Oyer & Terminer.*

1. By Commission. } *Affize.*

1. By Commission. } *Nisi prius.*

1. By Commission. } *And divers others.*

2. By Cu- } *As the Courts* *Lancaster.*

stom, or } *of the Coun-* *Chester.*

Charter: } *ties Palatine of* *Durham.*

3. By Virtue of Acts of } *Grand Sessions.*

Parliament, and the } *Sewers.*

King's Commission: } *Justices of*

As the Courts of } *Peace.*

And divers

others.

3dly, *Inferior Courts of Record.* Tho' there

be a Subordination of most Courts to

some other, yet for Distinction's Sake

I shall call those *Inferior Courts* which

are ordinarily so called; as,

Corporation-Courts.

Courts-Leet.

Sheriffs Torns.

Secondly, Courts not of } *Courts-Baron.*

Record are divers: As, } *County-Courts.*

And others. } *Hundred-Courts.*

And others.

But

But I am not solicitous of pursuing this Matter of Courts and their *Jurisdiction* over largely ; because all the Learning of them is already put together in the *Tractates* of Crompton, my Lord Coke, and others, who have written of the *Jurisdiction* of Courts.

S E C T. XII.

Of Inferior Magistrates, Sine Jurisdictione.

IT now follows, that somewhat be said of those Magistrates that have a certain *Imperium*, but without Jurisdiction; and these are called *Ministerial Officers*.

Some Officers indeed are simply Ministerial, as Clerks and Officers in Courts, *Custos Brevium*, Prothonotaries, the Remembrancers and Chamberlains of the *Exchequer*, &c.

But these, though they have a Superintendency over their Subordinate Ministers, and a Ministerial Administration in Courts of Justice and elsewhere, I shall not meddle with in this Place, but refer them to the several Courts to which they belong.

For those that I here intend are of a more publick and common Kind, and are principally these, viz.

1. *The Sheriff of the County*, who is the greatest Ministerial Officer ; and I therefore call him a Magistrate, because he is a Conservator of the Peace

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of the County, and executes the Process of the King's Courts.

Here are considerable,

How constituted;

How discharged;

What his Power, his Office, his Duty.

This is a large Subject: See those that have written of this Office.

2. *Mayors of Corporations.* And here of Heads and Governors of Colleges, &c.

3. *Constables, and Head Constables.*

These, though they have not any Jurisdiction to hold Conuzance of any Fact, yet are Conservators of the Peace, and have a Kind of *Mixtum Imperium* relative to it.

4. *Bailiffs of Liberties, Serjeants of the Mace,* and all that have a Power vested in them by Law for the Execution of Justice, are within the Precincts and Extents of their several Offices a Kind of Magistrates; for a Subjection is by Law required of others to them, in relation to that Power wherewith they are invested, and the Execution thereof.

Thus far of Magistrates both *Supream* and *Subordinate*, and the several Rights that are *Intuitu & sub ratione Officii*, annexed to them.

S E C T.

S E C T. XIII.

Of the Rights of the People or Subject.

HAVING gone thro' the Distribution of *Magistrates*, I come now to the other Term of Relation, namely, of *Subjects*.

And the *Rights* of *Subjects* are of these Two Kinds, *viz.*

1. *Rights of Duty*, to be perform'd.

2. *Rights of Privilege*, to be enjoy'd.

1st. As to the First of these, they are such *Duties* as are to be paid or perform'd by them; either,

1. To the King, as *Supream Executive Magistrate*: Or,

2. To *Inferior or Subordinate Magistrates*.

The *Rights* or *Duties* to be perform'd by the People to the King himself, are,

1. *Reverence and Honour, Fidelity and Subjection*.

All which come under the Name of *Allegiance*; and the Extent of this is declared, and Assurance thereof given, by the Oaths of *Allegiance, &c.* of *Supremacy* by 1 *Eliz.* of *Obedience* by 3 *Jac. I.*

2. *Payments of those Rights and Dues, Customs, Subsidies, &c.* which either by the *Common Law*, or by *Act of Parliament*, are settled on the King.

The *Rights* to be perform'd to *Inferior Magistrates*, are,

D 4

1. *Reve-*

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1. *Reverence and Respect* to them, according to their Place and Authority.
 2. A *just Subjection* to their lawful Power and Authority, as far as by Law it extends.
- II. 2dly. The *Rights and Liberties* to be enjoy'd by the People, both in relation to the King, and all his *subordinate Magistrates*, are,
- That they be protected by them, and created according to the *Laws of the Kingdom*, in relation to,
1. Their Lives.
 2. Their Liberties.
 3. Their Estates.
- And here falls in all the Learning upon the Stat. of *Magna Charta*, and *Charta de Foresta*, which concerns the *Liberty* of the Subject, especially *Magna Charta*, cap. 29. and those other Statutes that relate to the Imprisonment of the Subject without due Process of Law, as the Learning of *Habeas Corpus*'s, and the *Returns* thereupon ;
- Where the Party is to be bailed.
- Where to be remanded.
- Where to be discharged.
- Hither also refer those *Laws* that relate to Taxes and Impositions ; as,
- 2 Inst. 59. The Stat. *De Tallagio non concedendo*.
- 3 Car. I. The Petition of *Right*, &c.
- Also, the Statutes and Laws concerning *Monopolies*.
- Commissions of *Martial Law*.
- Commitments by the Lords of the Council.
- And concerning the *Trial* of Mens Lives, Liber-

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Liberties, or Estates otherwise than according to the known *Laws* of the Land. These, and many more of this Nature, are common Heads of those *Liberties* and *Rights* that the People are to enjoy under the Magistrate.

And thus far concerning the *Capita Legis*, in reference to the *Political Relation* of the Magistrate, both *Supream* and *Subordinate* of the one Part, and the *Subditi* or *Subject* on the other Part : For though *Subject*, in a more strict and peculiar Sense, is the Correlative of the Prince ; yet in a more large and comprehensive Sense, it is a Correlative to any *inferior* Magistrate also, according to a more limited and restrained Subjection.

S E C T. XIV.

Of the Rights of Persons under Relations Oeconomical : And first, of Husband and Wife.

Thus far of the *Rights* of Persons under a *Political Relation* : Now concerning the *Rights* of Persons under a *Relation Oeconomical*.

And they are these Three Pairs ;

1. Husband and Wife.
2. Parent and Child.
3. Master and Servant.

And I shall here *note* once for all, That in *Oeconomical Relations*, as in the former, I shall not only take in the Persons themselves, but

but also those *Jura Rerum* that concern them under that Relation; which though they may be of a distinct Consideration under *Jura Rerum*, yet in this, and what follows, I shall (as before I have done) take in those *Jura Rerum* that have a Kind of Connexion with the *Jura Personarum*, under their several Relations.

In the Consideration of this Relation of *Husband and Wife*, are these Things considerable, *viz.*

1. In relation to the Persons themselves.

2. In relation to certain Connexes, Consequences, or Incidents, belonging to Persons under this Relation.

I.

1st, As to the former, these *Capita Legis* and legal Enquiries fall in, *viz.*

1. The Persons that by Law may intermarry, the Limits whereof are prescribed by the Stat. 31 H. 8. restraining it to the Degrees prohibited by the *Levitical Law*.

And yet a Marriage within those Degrees is not void, but voidable by Sentence of *Divorce*.

2. The Age of *Consent* to the Marriage: In the Male, Fourteen.

In the Female, Twelve.

Note, The *Effects* of Marriages *infra Annos Nubiles*.

3. The *Differences* of Marriages; as, A Marriage *de Facto*;

What is requisite to the Constitution thereof;

And

And what Effect it has.

And a Marriage *de Jure*;

What it is, and the Effects:

And how each may be tried.

4. What dissolves the Marriage.

And here of Divorces, *viz.*

Co. on Lit.

1. *A Mensa & Thoro* only; as,

235. a.

1. *Causa Adulterii.*

2. *Causa Sævitie.*

2. *A Vinculo Matrimonii*; as,

1. *Causa Consanguinitatis vel Affinitatis.*

2. *Causa Præcontractus.*

3. *Causa Frigiditatis.*

And here the Effects of such Divorce,

In relation { To the Parties themselves.
To their Children.

2^{dly}, The Second Thing is, in relation II.
to those Incidents and Consequences that arise
upon the Intermarriage, *viz.*

1. What Things the Husband acquires by I Rol. A-
the Intermarriage, *viz.* brid. 342.

Personal Things in Possession.

Real Chattels to dispose.

And here,

What shall be a Possession,

What a Disposition.

2. What Things he acquires by the Death
of his Wife:

1. In relation to Chattels real;
By surviving her. *Vide Sect. 23.*

2. In relation to Inheritances; as,
Tenant by the Courtesy, if he have Issue
inheritable by her.

Here of *Tenants by Courtesy.*

Bacon's
Hist. 105

3. What

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3. What Things he acquires not by the Intermarriage, or Death.

Note, Personal Things in Action, are in him to discharge by the Marriage; but not to enjoy them by Marriage, or Death, unless he be her Executor or Administrator.

4. What Acts of the Husband during the Marriage bind the Wife.

And here of Discontinuances.

5. What Acts of the Wife during Coverture bind the Husband, and what not.

And here of

Her Contracts,

Her Wills,

Her Receipts.

6. What Acts bind her self, and what not.

And here of Fines by Judgment against her.

7. What the Wife acquires by the Marriage or Death of the Husband.

1. In relation to Honorary Titles and Precedence.

2. In relation to Inheritances.

And here of *Dower*, the Kinds of it. When and how due.

Also of *Quarantine*.

3. In relation to Chattels.

Here *De rationabili parte Bonorum*.

And *Bona paraphernalia*.

8. Remedies by the Wife against the Husband.

1. *In Casu Sævitie*.

2. *In Casu Alimonie*.

Either

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Either in the Spiritual Court :
Or Temporal.

9. In what Actions they must sever.

In what they may join or sever.

10. What Relation of *Proximity* either has
to the other in case of Survivorship, as
to the Administration of each other's
Goods.

S E C T. XV.

Concerning the Relation of Parent and Child.

I Come now to the Second Oeconomical Relation, i. e. Father, or Mother, and Children; and therein we are to consider,

I. The Father's Interest in the Child :

1. In his *Custody* or *Wardship*.

2. In the *Value* of his *Marriage*.

3. In his *Disposal*.

The Father has the *Disposal*.

1. Of his *Child's Education*.

2. Of his *Custody* to another.

Vide the late Act, how far the Mother, surviving the Father, is interested in those *Rights*.

II. The Child's *Interest* in the Father or Mother, *Sid. 113.*

To be maintain'd by him in case of *Impotency*, by Stat. 43 *Eliz.*

III. The *reciprocal Interest* of each :

whereby they may,

1. Maintain each other's *Suits*.

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2. Justify the Defence of each other's Persons.

1 Sid. 114,
115.

Here inquire how far forth the Grand-child, after the Death of the Father, is a Child within these Considerations.

S E C T. XVI.

Of the Relation of Master and Servant.

Touching the Third Oeconomical Relation, of Master and Servant, little is to be said.

But here consider,

1. The Kinds of Servants.

2. The Nature of Retainers.

3. The Acts that may be done reciprocally by the Master or Servant to each other.

1. In maintaining their Suits.

2. In defending their Persons.

S E C T. XVII.

Concerning Relations Civil.

I Have done with Relations Political, and also Oeconomical, and therefore now come to those which I call Civil; though, 'tis true, that

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that Term in a general Acceptation, is also applicable to the Two former Relations.

But in a limited and legal Sense I distinguish *Civil Relations* into Four Kinds, viz.

1. *Ancestor and Heir.*
2. *Lord and Tenant.*
3. *Guardian and Pupil.*
4. *Lord and Villein.*

S E C T. XVIII.

Concerning Ancestor and Heir.

THIS Relation I made distinct from that of *Parent and Child*, because many Persons are *Ancestors*, as to the Transmission of Hereditary Successions, that are not Parents, and many inherit as *Heirs* that are not Children to those from whom they inherit. And although the Business of Hereditary Successions will fall in hereafter, when we come to speak of the *Jura Rerum*, and the Manner of transferring of Properties, yet I shall mention it here also. And first, consider,

I. Who cannot be Ancestor or Heir.

1. A Bastard may be *Ancestor* in relation to his own Children, or their Descendants, but not to any else.

But a Bastard cannot be *Heir*.

Ante, p. 41

Add here, of *Bastards*;

Who a Bastard by the Laws of England.

By

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- By what Name he may take : By
Purchase, &c.
2. In a right ascending Line, the Son is not an Ancestor to transmit to his Father or Grandfather by Hereditary Succession.
 3. The Half-blood is an Impediment of Descent, viz.
Of Lands;
Not of Dignities,

Infra. Sect.
30, 33.

II. Who may be Ancestor or Heir.

And here all the Rules of Hereditary Successions may come in: Whether,

1. In *Linea Descendente*, from Father to Son, or Nephew.
2. In *Linea Ascendente*, from Nephew to Uncle.
3. In *Linea Transversali*, from Brother to Brother.

S E C T. XIX.

Concerning Lord and Tenant.

Under the Relation between Lord and Tenant, these Titles fall, viz.

- 1st, The Tenure it self:
What it is;
How created;
What the Fruits thereof.

Inf. Sect.
24.

1. Rent:

- | | |
|---|-------------|
| { | 1. Service. |
| | 2. Charge. |
| | 3. Seck. |

2. Service

2. Services of Two Kinds:

1. Of *Common Right* incident to Te-

nants; as,

Fealty:

What it is.

2. *Conventional Services*; as,

Homage,

Knights Service,

Grand or Petit Serjeanty.

2dly, Certain Perquisites arising from it;

as,

Wardship;

Marriage;

Escuage;

Relief:

And also Escheat; which is either,

Ex defectu Sanguinis, for want of *Posse*,

Heirs: Or,

Ex Delicto Tenentis, as by Attainder.

Sect. 33.

And these several Titles may be branch-
ed into exceeding many Particulars.

S E C T. XX.

Concerning Guardian and Pupil.

TH E Third Sort of *Civil Relations* are
Pupil and Guardian. And herein are
considerable.

It With respect to the *Guardian*, what *3 Co. 37.b.*
and how many Sorts of *Custodies* there
are: As,

1. *Guardian* by Nature, the Father;

E

And,

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And in some { The Mother.

Respects, { The Grandfather.

Quere, In what Cases, and to what Intents.

2. *Guardian* by Nurture.

3. *Guardian* by Socage :

Who shall be ;

For how long Time.

4. *Guardian* by Knights Service.

Vide Section. prox' supra.

II. With respect to the *Pupil* or *Heir*, is considerable ;

1. When he shall be said of full Age :

1. By Common Law.

2. By Custom.

2. What he is enabled or disabled to do :

1. In relation to Lands.

2. In relation to Goods or Contracts.

And here,

Where he shall be bound ;

Where not.

These may come in here, but more properly before, under *Capacity*, *Seç. 1.*

S E C T. XXI.

Of Lord and Villein.

THIS Title is at this Day of little Use, and in Effect is altogether antiquated ; and therefore I refer my self herein wholly to *Littleton*.

S E C T.

S E C T. XXII.

Concerning Persons or Bodies Politick,
i. e. Corporations.

I Have done with the *Jura Personarum Naturalium*, consider'd under their several Relations, Political, Oeconomical, and Civil; and therefore I now come to *Persons Politick*, or *Corporations*, that is, *Bodies created by Operation of Law*.

I. The Highest and Noblest *Body Politick*, is the King, who though he be a *Body Natural*, yet to many Purposes is also a *Body Politick* or *Corporate*, as has been already shewn, and I shall not now resume. Therefore *Bodies Corporate*, in respect of the Nature of them, I divide into Two Kinds, viz.

1. Ecclesiastical.

2. Temporal.

I. *Ecclesiastical Corporations* are distinguish'd in their Constitution, thus; viz.

1. In the Title of it.

2. In the Manner of it.

3. In the Nature of it.

1. In the Title of their Constitution, they are,

1. By Prescription.

2. By Charter; as all new *Ecclesiastical Corporations*, founded within Memory, are,

2. In the Manner of their Constitution, they are,

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1. Elective.
2. Presentative.
3. Donative.

And here,
Of Institution.
Induction.

By whom to be made ;

And when ;

And the Effects thereof.

Also of *Lapse*;

And *Devolution* ;

When, and how.

3. In the Nature of their Constitution, they undergo many *Diversifications*, and are,

1. *With Cure*, as Parson, Vicar, &c.
Without Cure, as Prebend.

2. *Regular*, as Abbot, Prior.

Secular, as Master of Hospital,
Parson, Vicar, &c.

3. *With Dignity*, as Bishops, Deans,
Chancellors; or,

Without Dignity, or *Simple Benefices*,
as Parson, Vicar, Prebend.

4. *Sole*, as Bishop, Dean, Parson, Vi-
car, Prebend; or,

Aggregate, as Dean and Chapter,
Master and Confraternity.

And under every of these Distinctions,
the following Connexes fall in, and are
considerable, viz.

1st, How they may acquire ;

And what is requisite thereto.

1. By Charter or Deed.

2. By Licence to purchase in *Mortmain*.

And

And here of *Mortmain*, which is equally applicable to all Sorts of Corporations, whether *Ecclesiastical* or *Secular*.

2dly, How they may *alien*.

Here fall in the several *Disabling* Statutes of the 1st, 13th, and 18th of *Eliz.* and the *Enabling* Statute 32 H. 8. &c. and what *Circumstances* and *Qualifications* are requisite to enable such Alienations: And if by *Demise* or otherwise.

3dly, How they are *dissolved*, and the *Effect* of such Dissolutions; as,

What becomes of

Their Lands;

Their Goods.

And this is likewise applicable to *Lay Corporations*.

II. Now as to *Temporal* or *Lay Corporations*.

They are of *Two Kinds*:

1. *Special Corporations*, i. e. erected to some *Special Purposes*, as where the Grant is to a Monk, or to the *Good Men* of *Islington* in Fee-Farm.

So Church-wardens are, by the Common Law, a *Special Corporation* to take Goods or personal Things to the Use of the Parish.

2. *General Corporations*; which are distinguished thus:

1. In respect of the *Title* of their Corporation.

1. By Charter.

2. By Prescription.

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2. In respect of their *Quality* or *Condition*, they are either,

1. *Sole*; as the Chamberlain of London, as to Bonds taken by him for the Use of Orphans, is a *Sole Corporation*.
2. *Aggregate*; as Mayor and Commonalty, Master and Scholars, Master and Confreres of an Hospital, &c.

And here,

The Manner of their *Visitation*:

And by whom.

3. In respect of the *Rules* of their Constitution, where the Members are,

1. *Elective*.
2. *Donative*.

And as common *Incidents* to Corporations are considerable,

1. How they are *dissolvable*.

By *Quo Warranto*.

2. The *Effect* of such Dissolution.

3. How the *particular Members* are *removable*.

4. Their *Remedy*, if wrongfully remov'd,
By *Mandamus*.

And here comes in the Learning of *Writs of Restitution* in the *King's-Bench*, of Persons unduly disfranchis'd.

Hitherto of the *Distribution* of the Heads and Branches of the Law, touching the *Jura Personarum*, or *Rights of Persons*.

S E C T.

S E C T. XXIII.

Concerning the *Jura Rerum*, and the
General Division thereof.

HAVING done with the *Rights of Persons*,
I now come to the *Rights of Things*.
And though according to the usual Method
of Civilians, and our ancient Common Law
Tractates, this comes in the second Place
after the *Jura Personarum*, and therefore I
have herein pursu'd the same Course; yet
that must not be the Method of a young
Student of the Common Law, but he must
begin his Study here at the *Jura Rerum*;
for the former Part contains Matter proper
for the Study of one that is well acquainted
with those *Jura Rerum*.

And although the Connexion of *Things*
to *Persons* has in the former Part of these
Distributions given Occasion to mention ma-
ny of those *Jura Rerum*, as particularly an-
nex'd to the Consideration of *Persons* under
their several Relations, yet I must again
resume many of them, or at least refer un-
to them; and this without any just Blame
of Tautology, because there they are con-
sider'd only as incidental and relatively;
but here they are consider'd absolutely in
their own Nature or Kind, and with rela-
tion to themselves, or their own Nature, and
the several *Interests* in them, and *Transactions*
of them.

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And in this Business I shall proceed in the Method following, *viz.*

1. I shall consider the *Things* themselves, about which the *Jura Rerum* are conversant, and give their general *Distributions*.
2. I shall consider the several *Rights* in those *Things*, or to them belonging, and the Manner of the Production, Creation, and Translation of those *Rights*.
3. I shall consider the *Wrongs*, *Injuries*, or *Causes of Action*, arising by *Wrongs* or *Injuries* done to those *Rights*.
4. I shall consider the several *Remedies* that relate either to the Retaining or Recovering of those *Rights*.

First, Therefore I proceed to the Consideration of the *Things* themselves, and their *Distributions*. *Bracton* (and others) following the *Civil Law*, in his *Second Book*, cap. 11. *De Rerum Divisione*, makes many *Distributions* of *Things*; but I shall only use such a *Distribution* as may be comprehensive enough to take in the general *Kinds* of *Things*, whereof the *Law of England* takes Notice, without confining my self to the *Distributions* of others, but where I find it necessary for my Purpose,

Things therefore in general may be thus distributed, *viz.*

1. Some *Things* are *Temporal* or *Lay*.
2. Some *Things* are *Ecclesiastical* or *Spiritual*.

Thof

Those Things that are *Temporal* or *Lay*,
are of Two Kinds ;

1. Some are *Juris publici*.
2. Some are *Juris privati*.

1st, Those Things that are *Juris publici*,
are such as, at least in their own Use, are
common to all the King's Subjects; and are
of these Kinds, viz.

1. Common Highways.
2. Common Bridges.
3. Common Rivers.
4. Common Ports, or Places for Arrival
of Ships.

And this lets in the various Learning
touching those Things. As for Instance :

Who are to repair Highways or Bridges.

1. By *Tenure*.
2. By *Custom*, or of *Common Right*.

Also concerning Nuisances in them.

And in Common Rivers or Ports.

And how to be remedied.

☞ But this we shall meet with when
we come to *Pleas of the Crown*.

2^{dly}, Those Things that are *Juris privati*,
are of Two Kinds :

1. Things *Personal*.
2. Things *Real*.

Things *Personal* again are of Two Kinds :

1. Things in *Possession*.
2. Things in *Action*.

Things *Personal* in *Possession* ; as,

Money, Jewels, Plate, Household-Suff, Cat-
tle of all Sorts, Emblements, &c.

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Things in *Action* are Rights of Personal Things, which nevertheless are not in Possession ; as,

1. *Debts due*, either,

1. By *Contract* ;

2. By *Specialty* ;

1. By *Deed or Obligation*.

2. By *Recognizance*.

2. *Goods*, whereof the Party is *divested*, or out of Possession.

3. *Rights of Damages* uncertain ; as, *Covenants broken*.

4. *Legacies* not paid or deliver'd.

5. *Personal Things in Contingency* ; as, *Accounts*, and many more.

Also *Annuities* which are partly in Possession, for that they are grantable over ; and partly in *Action*, because not recoverable but by *Action*.

S E C T.

S E C T. XXIV.

*Concerning Things Real and their
Distribution.*

Things Real are of Two Kinds :

1. Corporeal.

2. Incorporeal.

Corporeal Things Real are such as are man-
urable.

And they again are of Two Kinds ;

1. Simple.

2. Aggregate.

I. Things Corporeal which are Simple, are ge-
nerally comprehended under the Name of
Lands ; which yet are distributed into sever-
al Kinds, according to their several Qua-
lifications, and accordingly are demandable
in Writs ; as,

A Messuage, a Cottage, a Mill, a Toft, a
Garden, an Orchard, Arable Land, Meadow,
Pasture, Wood, Marsh, Moor, Furze, and
Heath, and divers other Appellations.

And here the Learning comes in touch-
ing the Names of Things, by which they ei-
ther,

1. Pass in Assurances ; or,

2. Are demandable by Writs, &c.

Things Corporeal Aggregate, are such as con-
sist of Things of several Natures, whether
they be all Corporeal, or the principal Part
Corporeal, but the other Part Incorporeal ; be-
cause that Part which is Corporeal in them,
gives

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gives it the Denomination of *Corporeal*; and they pass without *Deed* for the most part, as *Things Corporeal* do, and are of several Kinds, viz.

1. *Honours*, consisting of many *Manors*.
2. *Manors*, consisting of,
 1. *Things Corporeal*, as *Demefns*.
 2. *Things Incorporeal*, as *Reversions*, *Ser-vices*.

And here of *Manors*, how created.

And the *Incidents* to them; as,
Court-Baron.

Also of the Distribution of them into,

1. *Manors in Right*, where there are *Demefns* and *Freeholders*.
2. *Manors in Reputation*, as *Conven-tionary* or *Customary Manors*, consisting of *Copyholders* only.
3. *Rectories*, consisting of *Glebe* and *Tithes*.

And although *Rectories* Presentative may seem more properly to come under *Things Ecclesiastical*; yet since at this Day many *Rectories* and *Tithes* are also become *Lay Fees*, I bring them in under this Distribution.

4. *Vills*, *Hamlets*, *Granges*, *Farms*, &c. are a Kind of *Corporeal Things Aggregate*; for they consist of *Houses*, *Lands*, *Meadows*, *Pastures*, *Woods*, &c.

And here comes in,

1. *Parcel*, or *Nient Parcel*.
 1. What *Parcel* in *Right*.
 2. What *Parcel* in *Reputation*.

And the Effects thereof in Point
of *Conveyance*.

2. All

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2. All the Learning of *Incidents, Appendants, Appurtenances, &c.* as,

1. What may be *appendant, appurtenant, regardant.*

2. How and where they pass by *general Words*, without naming them.

II. *Things Incorporeal* are of a large Extent, but may be reducible unto those Two general Kinds, *viz.*

1. *Things Incorporeal, not in their own Nature*, but so called in respect of the *Degree or Circumstance* wherein they stand; as,

Reversions.

Remainders.

The Estate of Lands.

Here of *Reversions and Remainders*; what they are, how transferr'd.

1. By Deed.

2. By Livery without Deed.

Also how a *Reversion* may pass by the *Name of Lands*, or by the *Name of a Remainder*, or *converso.*

2. *Things Incorporeal in their own Nature*:

And those are of very great Variety, and hardly reducible into general Distributions, and therefore I am forced to take them by Tale, *viz.*

1. *Rents reserved or granted*; as *Rent-Service, Rent-Charge, Rent-Seek.*

And here of *Rents*; the several *Kinds of them*; how created, and transferr'd, *viz. By Deed.*
How

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How apportioned, how extinguish'd ;
what the ordinary Remedy to re-
cover it, viz. Distress.

But of Distresses, see hereafter in
Remedies.

2. Services Personal incident to Te-
nures ; as, Homage, Fealty, and
Knights Service ; what Services
are entire, what severable.

3. Advowsons of all Sorts,
Donative.
Presentative.

And here of Right of Patronage,
Right of Foundership ; how rais-
ed ; how transferr'd ; what In-
cidents to it.

4. Tithes of all Sorts,
Personal.
Predial.
And Mix'd.

And here again of Tithes, their Kinds,
their Discharges, &c. may be re-
ferr'd hither, and that more pro-
perly than before.

5. Commons of all Sorts ; as Common
of Estovers, and of Pasture appen-
dant and appurtenant ; for Cattle cer-
tain, and for Cattle sans Number,
Separabile Pastura ; and what may
be done by those Commoners,

1. In relation to other Com-
moners by Admeasurement.

2. In relation to the Lord by
Distress or Action.

And

And all the Learning hereof may be added here, - though we shall meet with it again hereafter.

6. All Kinds of *Proscua capienda in alieno solo*; as *Herbage, Pawnage, &c.*
7. All Kinds of *Pensions, Proxies* (Procurations), &c.
8. *Offices of all Sorts.*

And here of *Offices*, their Distribution, what may be incident or appurtenant to them.

9. *Franchises and Liberties* of all Sorts, many of which have been before mentioned, and may be transferr'd hither.

And here I shall again shortly distribute them into these Two Kinds, *viz.*

1. Such as are *Flowers of the Crown*, And Part of the King's Royal Revenue, as *Waifs, Strays, Felons Goods, Vids Sess. Goods of Persons outlaw'd, Prisage, 8. Wreck, Treasure-Trove, Royal Fish, Royal Forfeitures, Fines, Issues, Amerciements, Forests, &c.*
2. Such as are not Parcel of the King's Royal Revenue, but either lodg'd in him, or created by him, as *Counties Palatine, Markets, Fairs, Tolls, Courts-Leet, Hundred-Courts, Liberty to hold Pleas, Returns of Writs, Bailiwicks of Liberties, Warrens, Ferries, and the like.*

And

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And every one of these yield a large Field of Learning, viz.

1. How they may be created or acquired.

1. What are acquir'd by Prescription or Custom.

2. What in Point of Charter.

2. Where one Liberty may be granted to the Prejudice of another, or not.

3. How these several Liberties are to be used; what their Nature, &c.

4. How they may be lost, either by Nonuser, Misuser, Nonclaim in Eyre.

And therefore, though I have mentioned these Liberties and Franchises before, in relation to the King's Voluntary Jurisdiction in creating them, yet the full Discussion and Learning of every of them may be hither referr'd.

10. Villeins: And here that Learning may come in. *Vide ante*, Sect. 21.

11. Dignities; as Dukes, Marquisses, Earls, Viscounts, Barons, &c.

And thus far touching Incorporeal Real Things Temporal.

Their common Incident is, That they pass not from one to another without Deed. And to these several Titles, may be reduced all the Learning of each Particular.

SECTION XXV.

Concerning Things Ecclesiastical or
Spiritual.

I Have done with *Things Temporal*, and come to those that are *Ecclesiastical* or *Spiritual*: And though the Possessions of Ecclesiastical Persons, the Offices, Courts, and Jurisdictions Ecclesiastical, and Tithes also, might come in under this general Head; yet because these Things fall in the former Title under *Temporal Things*, and for that the Rule for them both is the same, I shall not need to repeat it here; only I will remove what before came under the Title *Corporations*, because it may be thought to come in more conveniently in this Place.

Ecclesiastical Things are of Two Kinds, viz.

1. Such as are Ecclesiastical or Spiritual in their Use.
2. Such as are so in their Nature.

1. Of the former Sort, are,

Churches;

Chapels,

Church-yards, &c.

(Which lets in the Learning touching
Repairs.)

And these are of Two Kinds.

1. *Parochial.*

And here falls in,

The Bounds of Parishes;

Relief of the Poor;

F

And

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And other *Parochial Charges*.

And these are either,

1. In Right.
2. In Representation.
2. Not Parochial ; as,
Chapels of Ease.

II. Such as are Ecclesiastical in their Nature, are either,

Dignities; or,
Benefices.

Ecclesiastical Dignities are of Two Kinds,
viz.

1. Superior ; as,
Archbishopricks,
Bishopricks.
2. Inferior ; as *Dignities in Cathedral Churches*, as,
Dean,
Chancellor,
Precentor.

Ecclesiastical Benefices are likewise of Two Kinds :

1. With Cure ; as,
Parsonages,
Vicarages, &c.
2. Without Cure ; as,
Prebends,
Ecclesiastical Hospitals, &c.
1. And here the Learning touching those Matters, and also touching *Vacancy by Pluralities.*
Also of *Appropriations, Common Dispensations, Qualifications.*
And *Vacancy, by Resignation,*

Depri-

*Deprivation,
Cession.*

So much touching *Ecclesiastical Benefices* not
observable *supra*, Sect. 22.

S E C T. XXVI.

Of the Nature and Kinds of Properties.

Hitherto of the Kinds of *Things*, I come
now to consider the Nature and Kinds
of those *Properties* or *Interests* that Persons
have, or may have in them.

The *Rights* of *Things* are distributed ac-
cording to the *Nature* of the *Things* them-
selves; which are,

1. *Personal.*

2. *Real.*

The *Right* of *Things Personal* is called *Pro-
priety*, and under that will come these Con-
siderables, *viz.*

1. The *Kinds* of those *Rights*.

2. The *Capacities* wherein they are held.

3. The *Manner* of their being acquir'd or
transferr'd.

I. The *Kinds* of those *Rights* or *Proprieties*
of *Things* are Three, *viz.*

1. A *Propriety* of *Action*, which is relative
to all *Things* in *Action*.

2. A *Propriety* in *Possession*.

3. A *mix'd* *Propriety*, partly in *Action*,
and partly in *Possession*.

F 2. 1st, Touch-

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1st, Touching the Property of Things in *Action*.

This is an *Interest* by Suit or Order of Law, to demand the *Things* themselves, or *Damages* for them.

But of this hereafter, when we come to *Wrongs* or *Injuries*.

2^{dly}, Touching Propriety in Possession: It is either,

1. *Simple* and *Absolute*.
 2. *Special* or *Particular*.
1. *Simple* or *Absolute* Property, is when a Man has it, and no other *has* or *can* have it *from* him, or *with* him, but by his own *A&* or *Default*.
2. The *Special* or *Particular* Property is of Two Kinds, *viz.*
1. Such as *some other* has a *concurring Interest* with him therein.
 2. Such wherein, though *no other* has any *concurring Interest* with him, yet his Property is but *temporary*, and vanishes by certain *Accidents* or *Occurrences*.

The former Kind of those *Special* or *Particular* Properties are very various, *viz.*

1. The Interest that a Man has by *Bailment*.
2. The Interest he has in Goods pledged: Or,
3. The Interest he has in Goods conditionally granted.
4. The Interest he has in (Things *distrain'd*, or) a *Distress*.
5. The Interest of Goods *demis'd* for a Term.

The

The Second Kind of *Special Property*, wherein though no other has a Property, nor indeed are the Things in themselves capable of any (certain or sure) Property, yet a Man by certain Contingents or Accidents may have a *Temporary Property* in them; such are Things *Ferae Naturæ*, wherein a *Temporary Property* may be lodg'd upon these Grounds, viz.

1. *Ratione Impotentiae*, as in Young Birds in a Nest upon my Tree.
2. *Ratione Loci*, as Conies and Hares while in my Ground.
3. *Ratione Privilegii*, as of Birds or Beasts of Warren while within my Warren, and Swans within my Liberty.

3dly, Touching *Mix'd Properties*, i. e. partly in Action, and partly in Possession: They are *Annuities*; wherein a Man may have a *Personal Inheritance*.

Thus far of *Property or Right in Things Personal*.

II. The Second Thing propounded, is the *Capacity* wherein a Man may have them; and that is double:

1. *In Jure proprio*.
2. *In Jure alterius*.

And this latter is of two Kinds;

1. As a Body Politick.
2. As Executor in Right of the Testator.

III. The Third Thing propounded is, *The Manner of the Acquest*, or Translation of

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Property. And because both of these will be much of one Consideration, I shall join them in the Course of my Distributions.

Personal Things, either in Action or Possession, may be acquir'd or transferr'd Three Ways:

1. By Act in Law.
2. By Act of the Parry.
3. By a Mix'd Act, consisting of both.

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Of Acquisition of Property by Act in Law.

THIS Acquisition by Act in Law may be many Ways, viz.

1. By Succession, whereby Properties are transferr'd to the Successors of such a Corporation by Law or Custom, which has a Power to receive Personal Things in a Politick Capacity; as,

1. A Sole Corporation by Custom.
2. An Aggregate Corporation, by Common Law.

2. By Devolution, viz.

To the Executor.

To the Ordinary.

To the Administrator.

To the Husband by the Intermarriage,
i. e. As to Personal Things in Possession, but not as to Personal Things in Action.

3. By

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3. By *Prerogative*, whereby they are given to the King, or to such as have the *King's Title*, by *Grant* or *Prescription*; as, *Waif, Stray, Wreck, Treasure-Trove*.
4. By *Custom*; as in the *Case of Heriot-Custom*, and *Heriot-Service*, *Mortuaries*, *Heir-Looms*, *Foreign Attachment*, *Assignment of Bills of Exchange*.
5. By *Judgment*, and *Execution* thereupon, which in the *Case of the King* extends as well to *Things in Action* that have a *Certainty* in them (as *Debts*), as to *Things in Possession*. But in the *Case of a Common Person*, only as to *Things in Possession*.

And this by,

1. *Fieri Facias*: Or,
2. *Elegit*.

6. By *Sale in Market-Overt*.

Devant
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S E C T. XXVIII.

Acquisition of Property by Act of the Party, and Mix'd Act.

II. **A** Acquisition of Property by *Act* of the Party, may be Three Ways, viz.

1. By *Grant*.
2. By *Contract*.
3. By *Assignment*.

And herein is considerable.

1. That in the *King's Case* it extends as well to *Things in Action* as in *Possession*;

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session; for Debts may be assign'd to him, or by him.

2. In the Case of other Persons, only Things in Possession are assignable.

III. Acquisition thereof by a Mix'd Act, partly by Act of Law, and partly of the Party.

And thus Things in Action, as well as in Possession, are transferrable Two Ways.

1. By Act of the Party, with Custom co-operating.

Thus a Bill of Exchange is assignable.

2. By Operation of the Law, concurring with the Act or Default of the Party; as, Forfeitures of several Kinds, viz.

1. By Outlawry in a Personal Action.

2. By being put in Exigend in the Case of Felony.

3. By Attainder of Treason or Felony.

4. By Motion to the Death of any Person; as Deodand.

And thus far concerning the Rights of Things Personal.

S E C T. XXIX.

Concerning the Rights of Things Real.

I Now come to the Rights of Things Real: And herein I shall hold this Method.

I shall consider the Rights of the Things themselves, or the various Interests and Estates in Things Real, viz.

1. The

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1. The different *Nature* of Estates or Interests in Things Real, in relation to,
 1. Their *Nature* and *Extent*.
 2. Their *Limitation* or *Qualification*.
2. The different *Relation* of those Estates, with respect to the *Possession*.
3. The different *Qualities* thereof in re- *Vide Sect.*
spect of the *Persons* having the same. 32.

First, As to the difference of *Estates*, with relation to their *Nature* and *Extent*, they will be divided into,

1. Estates by the *Course* of the *Common Law*.
 2. Estates by *Custom* or *Copyholds*.
- Estates by (Course of) the *Common Law* *Pref. Co. Lis.*
are divided into,

1. Estates of *Inheritance*.
2. Estates *less than Inheritance*.

Estates of *Inheritance* are,

1. *Fee-Simple*.
2. *Fee-Tail*.

S E C T. XXX.

Of Estates in Fee-Simple and Fee-Tail.

First, **O**F an Estate in *Fee-Simple*; wherein is considerable,

1. The *Extent* and *Nature* of the Estate.
 2. The *Quality* incident thereunto.
1. As to the *Extent* and *Nature* of the Estate:
It is an Estate to a Man and his Heirs for ever. And a *Fee-Simple* is either,
1. *Absolute*

Co. Lit. 18.

1. *Absolute.*2. *Limited or Qualified.*

An *Absolute Fee-Simple* is such as has no Bounds or Limits annex'd to it, and is an Estate to a Man and his Heirs absolutely for ever.

A *Limited or Qualified Fee-Simple* is such as has some Collateral Matter annex'd to it, whereby it is made by some Means determinable, viz.

By Limitation ; or,

By Condition.

2. The *Quality* of an Estate in *Fee-Simple* is That it is transmissible in the very Nature of the Estate :

1. To the *Successor* in *Bodies Corporate* by a *Right of Succession*.

2. To the *Heir* in the Case of *Persons* natural by *Descent*.

3. To any other *Person* by *Alienation*.

As to the former of these,

The Nature of the Corporation directs the Rule of *Succession*.

As to the Second,

The Rules of *Descents* are directed,

Infra Sect.

1. By *Custom*.

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2. By *Common Law*.

1. By *Custom* ; as,

To all the Sons in *Gavelkind*.

To the *Youngest* in *Barrow English*.

Bacon Hist.

1 Part, p.

106.

2. By the *Common Law*, wherein the Rules of the *Common Law* give the Direction.

But of this more at large in *Sect. 33*.

The *Second Estate* of *Inheritance* is *Fee Tail*.

And

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And herein are likewise observable;

1. The *Nature and Extent* of the Estate.

2. The *Incidental Qualities* thereof.

1. As to the First of these,

The *Manner of its Limitation* is that which defines and circumscribes it: And that is either,

1. *General*; when an Estate is given *Co. Lit.* to one, and the Heirs of his Body; *sect. 13.* the Heirs Male of his Body, or the Heirs Female of his Body.

2. *Special*; as when it is limited to a Man, and the Heirs of his Body by such a Woman; or *converso.*

And here falls in a Consequent of such a Limitation; namely,

An Estate Tail after Possibility of *sect. 31.* Issue extinct.

2. As to the *Incidental Qualities*, or *Qualities* incident to such an Estate, they are,

1. In relation to the *Hereditary Trans-*
mission thereof.

2. In relation to the *Alienation* thereof.

1. In relation to the *Hereditary Trans-* *Infra Sect.*
mission thereof. The Rules of De- 33.
scend direct the Manner of it.

2. In relation to the *Alienation* thereof. Regularly by the Stat. *De Donis Conditionalibus* they have no Power of aliening, so as to bar the *Issue*, *Reversion*, or *Remainder*.

And

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And therein are considerable,

1. What Alienations are void by his Death, either,

1. By the Stat. *De Donis Conditionalibus*.

2. By the Stat. 11 H. 7. of *Joindresses*.

1. What Alienations are voidable only, viz.

By *Entry*.

By *Action*.

By *Suit*.

And therein of *Discontinuances*.

3. What Alienations bind the Issue in Tail, but not the Reversioner, viz.

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1. A Fine with Proclamations, by Stat. 4 H. 7.

2. A Lease for Three Lives, &c. and accustomable Rent, by Stat. 32 H. 8.

3. Attainder of Treason, by Stat. 33 H. 8.

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4. A Warranty Collateral, Lineal, with Affets.

4. What Alienations bind both the Issue and the Reversion, viz.

A *Common Recovery* pursuant to Law.

And here of *Common Recoveries*:

Their Kinds;

Their Effects.

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S E C T. XXXI.

Of Estates at Common Law, less than Inheritance.

THE said Estates are considerable likewise :

1. In their *Nature* and *Kinds*.

2. In their *Incidents*.

I. In their *Nature* and *Kinds*, they are either,

1. Estates of *Freehold*.

2. Estates *less than Freehold*.

1. Estates of *Freehold* are again divided into,

1. Such as arise by *Act of Law*.

2. Such as arise by *Act of the Party*.

Freehold Estates arising by Act of Law are,

1. Tenant by the *Curtesy of England*.

2. Tenant in *Dower*.

Sett. 14.

And here of the *Learning* of both these.

Freehold Estates arising by Act of the Party are,

1. Tenant for his *own Life* : Which is either,

1. *Simply* so ; Or,

2. With a *Privilege* annex'd ; as,

Tenant after *Possibility*, *De quo supra*. p. 75.

2. Tenant *Pur autre vie*.

And herein of *Occupancy*,

Ge-

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General.

Special.

As also of Estates limited to one, and his Heirs, *Pur autre vie*.

2. Estates less than Freehold are of Two Kinds :

1. Certain.

2. Incertain.

1. Estates less than Freehold certain are, Leases for Years.

And here also of Leases by Stat. Merchant, Stat. Staple, and Elegit.

And likewise the Learning of Extents, Re-extents, Audita Querela's, &c.

2. Incertain Estates less than Freehold are,

Tenants at Will.

These are determinable at the Will of either Party.

II. The Incidents to all these particular Estates, except Tenancy at Will, are these, viz.

1. They are transferrable from one to another, unless particularly restrain'd, By Condition ; or, By Limitation.

They are forfeitable.

And here of the various Forfeitures of particular Estates ; as,

1. Such as give a Right or Title of Entry to him in Reversion.

2. Such as give a Remedy by Action, as, Waste.

And here of the Title Waste.

SECT.

S E C T. XXXII.

*Of the Distinction of Rights of Estates,
with relation to the Possession.*

HAVING gone through the several Kinds *Vide*
and Natures of *Estates* both at Com- Sect. 29.
mon Law and by Custom, I come now in
the second Place to the *various Relations* that
these *Estates* have to the *Possession*; which
gives several other Determinations unto the
the *Rights* that Persons have to them.

These *Estates* before mention'd, and the
Rights thereupon, are either,

1. Such as are in *Possession*.
2. Such as are not in *Possession*.
1. The *Right of Estates in Possession*, is
where there does interpose no *Estate*
or *Interest* between the *Right* and the
Possession of the Thing; as,
Tenant for *Life* in *Possession*.
Tenant in *Fee* in *Possession*, &c.
2. The *Rights* that are not immediately
in *Possession*, are either,
 1. Where the *Time* of their *Enjoy-*
ment expects the *Accomplishment*
of something else that must ante-
cede it.
 2. Where the *Right* or *Estate* per-
chance is immediately in the *Par-*
ty; but the *Possession* thereof is re-
moved or detain'd by another.

I. As

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I. As to the former of these, they are of several Kinds, *viz.*

1. *Reversions*; which though a present Interest, yet stands in a Degree removed from the Possession till the Particular Estate be determined.
2. *Remainders.*
3. *Future Interests* of Terms for Years.
4. *Contingent Interests*; or Interests or Estate limited to take Place upon a precedent Condition.

This is frequent in Cases.

1. *Of Accrevers.*
2. *Of Contingent Uses.*
5. *Estates* subject to a Condition of *Re-entry*, wherein he that has the Benefit of the Condition, tho' he has an Estate in the Condition, yet he has not the Land till the Condition broken, and a *Re-entry*.

II. As to the latter of these, *viz.* Where the Estate is *divested*, or *removed*, or *detained*, by another.

This gives Two new and additional Denominations, *viz.*

1. A Title of an Estate.
2. A Right of an Estate.
1. A Title of an Estate, is where a Man has not yet the Possession, but has a Title to have it, by reason,
 1. Of a Condition broken.
 2. Of a Title of Entry given by Forfeiture.
 3. Of a Title of Entry by reason of Acts of Parliament.

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As Title of Entry for Mortmain.
For Assent to a Ravisher, &c.

2. *A Right of an Estate* is where a Man is put out of his Estate by the Wrong of another.

Hereby, though he has still the Right to have the Estate he had before, yet he has not the Estate it self in Possession.

And those Rights are of Two Kinds,

1. *Remediable.* And,

2. *Remediless.*

1. *Remediable Rights* are of Two Kinds :

viz. They are remediable, either,

1. *By Entry*, which is called a *Right of Entry*.

2. *By Action*, which is called a *Right of Action*. And these are,

1. In case of *Usurpation* of Advowson.

2. In case of a *Discontinuance* by Tenant in Tail, &c.

3. In case of a *Disseisin* or *Abatement*, and a dying seized by such Disseisor or Abator, and a Descent to his Heir.

And here all the Learning of

Entrses Congeable;

Discents que Toll Entry;

Continual Claim;

Infants, when bound, &c.

2. *Remediless Rights* are where the *Remedy* is taken away, though the *Right* remains ;

Which may be either,

1. *By Warranty*, *Collateral* or *Lineal*, with *supra*,
Affets. pag. 76.

And

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And here comes in the Learning of
Bars and Rebutters by Warranty.

2. By *Nonclaim* upon a Fine.

3. By *Limitation of Time.* By the old
or the later Statutes, introduced in
such Cases, *viz.* 32 H. 8. 21 Jac. 1.

Vide

Sect. 29.

III. The *Third* Thing I propounded, was
the different Qualities and Relations in re-
gard of the Persons having the Estate.

And these are,

1. *Sole Tenants.*

2. *Jointenants.*

3. *Tenants in Common.*

And here comes in the Learning of each of
these.

S E C T. XXXIII.

*Touching Acquisition and Translation of Es-
tates in Things Real. First, By Act in
Law.*

THUS far have I gone in a Descrip-
tion of the various Natures, Rela-
tions, and Kinds of Estates; and now I
come to the Manner or Means of their Ac-
quest or Translation.

And an Estate or Interest is thus transla-
ted, *viz.*

1. By *Act of Law.*

2. By *Means of the Party.* *Vide prox' Sect.*

1. By *Act of Law* there is a various Acqui-
sition of Things, according to their se-
veral Natures, *viz.*

1. Of

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1. Of Things Real that are Chattels.
2. Of Things Real that are Freeholds.
3. Of Things Real that are Inheritances.
1. As to the Acquest of Chattels by Act of Law; though they are Real, they are of the same Kinds as Things Personal. Therefore *vide ante Sect. 27.*

Only with this additional Exception, That Chattels Real go not to the Husband immediately by the Marriage, unless he survives the Wife.

2. As to the Acquest of Estates of Freehold by Act in Law, there is only the Title Occupancy which here comes in.

And that is either { 1. General.
2. Special.

3. As to Matters of Inheritance, the Titles of Acquests therein by Law seem to be of Two Kinds, *viz.*

1. Such as is applicable to all Estates of Inheritance, *viz.* Descent.
2. Such as is applicable only to the Acquest of Estates in Fee Simple.

I. The Act in Law applicable to the Acquest of all Estates of Inheritance, Descent, or Hereditary Succession.

And this is either,

1. Of an Estate Tail.
2. Of an Estate in Fee Simple.

Touching the Descent of Estates Tail; the Manner of the Limitation directs the Descent as aforesaid.

Touching the Descent of Fee Simple, Two Things are considerable, *viz.*

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1. The Rules of the Descent it self.
2. The Burthen or Charges that lie upon the Heir that takes by Descent.

§1. The Rules of Descents of Fee-Simple are directed, either;

1. By Custom; or,
2. By Common Law.

The Direction of Descents by Custom is various; as,

Sometimes to all the Sons, as *Gavelkind*.

Sometimes to the youngest Son, as *Borow English*.

Sometimes to the eldest Daughter, or youngest, &c. as some Customary Lands.

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The Direction of Descents by the Common Law, and the Rules thereof, are divers, viz.

1. Relating to the Quality of the Persons in the Line,

Ascending,

Descending,

And Transversal.

2. In relation to the Number of Persons inheriting, viz.

One, if it be a Male, is Heir.

All, if they are Females.

And here the Learning of *Partners and Partition*.

3. In relation to the Impediments of the Descent; as,

Illegitimation,

Half-blood,

Attainder,

Attainder,

Or Corruption of Blood.

2. The Burthen upon the Heir : *How* and *where* chargeable,

1. With the Debt or Covenant of the Ancestor.

2. With the Warranty of the Ancestor.

II. The Second Kind of Means of Acquisition by Act in Law, refers only to *Estates in Fee Simple* ; as,

First, By *Prescription* or *Custom* ; which is,

1. Of Things in *Gross* and *Substantive* :
And thus a Right of an *Incorporeal Inheritance* is gainable.

2. Of Things incident and appurtenant.

And here of *Prescription* or *Custom* ;
the Nature, Kinds, and Effects thereof.

Secondly, By *Escheat* ; which is either,

1. For Default of Heir.

2. For *Attainder* of the Tenant, *viz.*

For *Felony*, to the Lord.

For *Treason*, to the King.

Ante, p. 49.

S E C T. XXXIV.

Concerning Acquests by the Means of the Party. And First, By Record.

A *Cquests* of *Estates*, by the Means of the Party himself, may be of Two Kinds,
viz.

G 3

1. By

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1. By *Wrong*.
2. By *Right or Title*.

Acquisitions by Wrong are also of Two Kinds, viz.

1. By *Wrong to a Chattel*; as,
Ejectment of Farm.
Ejectment of Gard.
2. By *Wrong to a Freehold*; as,
Abatement;
Disseisin;
Intrusion;
Usurpation.

Acquisition by Right or Title, is likewise of Two Kinds:

1. By *Conveyance*.
2. By *Forfeiture*.

Acquisition by Conveyance. Here may be brought in all the Methods and Courses of *Assurances and Conveyances of Lands*, which lets in the most ample and considerable Part of the Law.

Conveyances therefore are of Two Kinds:

1. By *Matter of Record*.
 2. By *Matter in Pais*.
1. By *Matter of Record*, they are either,
1. By *Fine*.
 2. By *Common Recovery*.
 3. By *Deed-enroll'd*.
1. By *Fine*; where comes in all that *Learning*; viz.
1. Their *Kinds*.
 2. Their *Effects*.
- Their *Kinds* are in General Two,
- viz.

1. *Fines at Common Law*.

2. *Fines*

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2. *Fines with Proclamations.*

And here of their Kinds in *special*.

Their Effects ;

1. In relation to bar *Private*, or *Conveyance of Estates*.

2. In relation to Strangers, *Non-Claim*.

2. As to *Common Recoveries*, therein are considerable.

1. Their Kinds, with treble, double, or single Voucher.

2. Their Effects ;

1. In relation to *transferring* or *barring* Estates in Fee Simple.

2. In relation to *barring* Estates Tail, Remainders, Reversions, &c.

3. As to *Deeds enroll'd*, they are of Three Kinds, *viz.*

1. *Deeds enroll'd by special Custom*, as in *London*.

2. *Deeds enroll'd at Common Law*.

3. *Deeds enroll'd in Pursuance of the Stat. 27 H. 8. or Bargains and Sales enroll'd* :

Whereof hereafter, p. 93.

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S E C T. XXXV.

*Concerning Conveyances by Matter in Pais.
And First, of Deeds.*

Conveyances by Matter in Pais are of Two Kinds, viz.

1. Conveyances without Deed.
2. Conveyances by or with Deed.

I. Conveyances in Pais without Deed, are either,

1. Of Chattels; or,
 2. Of Freeholds.
1. Of Chattels; as Leases, or Extents of Land; and may be either,
By Grant or Assignment;
By Parol;
By Exchange; *Quare.*
 2. Of Freeholds of Lands by Livery. Of this hereafter.

II. Conveyance in Pais with or by Deed. Here we may consider,

1. Of the Nature of Deeds themselves,
2. Of their Effect or Efficacy in relation to,

Acquiring } Estates.
Transferring }

Concerning the Nature of Deeds, they are considerable:

1. *Simply in themselves:*

And here the whole Learning of Deeds, viz.

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Of the Parties thereto, and their Names.

Of the Kinds of Deeds, viz. Indented and Poll.

Of the Parts constituting Deeds :
Sealing and Delivery, &c.

2. With relation to the Passing of Estates ;
and so they are call'd,

*Charters,
Grants,
Feoffments.*

1. Deeds simply consider'd :

1. Their Constituent Parts, *Sealing and Delivery.*

2. The Parties to them ; *Grantor and Grantee, &c.* their Names, &c.

3. Their Kinds, *Indented*, and *Poll* ;
and the *Effects* resulting from both,
or either ;

Particularly of *Estoppel.*

2. Deeds considered with relation to
their *Use*, especially in *Grants*, *Feoffments*, and other *Conveyances*.

And herein we consider,

1. Their Kinds.

2. Their several Parts.

As to the *Kinds* of Deeds, they are either,

1. Such as have their *Efficacy* without
the Adjunct of some other Ceremony.

2. Such as to their *Effects* require another Ceremony to be joined with them.

I. As to the former of these, they are of
Three Kinds :

Grants ;

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Grants;

Releases;

Confirmations.

1. As to **Grants**: There are many Things that are of an **Incorporeal Nature**; [as, **Advowsons, Tithes, Liberties, Commons, &c.**] that,

1. Cannot pass from one to another by Act of the Party without Deed. Yet,

2 C. 23. b.

2. Pass by Deed without any other Ceremony requisite.

2. As to **Releases**, they are of several **Kinds**; viz.

1. **Releases**, whereby the Thing released is **extinguish'd** in the Possession of the Releasee; as, **Rights, Common, Seigniories, Rents, &c.** and other Profits issuing out of Lands by Release to the Tenant.

2. **Releases** whereby an Estate is transferr'd, which is either

1. By **Mittre le Estate**, as of one Jointenant to another.

2. By **Encrease or Enlargement** of the Estate, being made by the Reversioner to the Lessee in Privy, with apt enlarging Words.

3. As to **Confirmations**, they are of Two **Sorts**, viz.

1. **Corroborating** the Estate of which it is made; as, **Dean and Chapters** confirming the Grant of the Bishop; **Patron and Ordinary** confirming

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firming the Grant of the Parson:
or the Disseisee that of the Dis-
seisor.

2. *Enlarging the Estate with apt Words*; as, in case of *Release*.

III. As to the other Sort of Deeds that require a Ceremony concomitant with them, to make them effectual, viz.

1. A *Livery of Seisin* in the Case of a Feoffment, though by Deed.

And here comes in all the Learning of *Livery*, *Letters of Attorney* to make or receive it, &c.

2. *Attornment* requisite in Cases of Grants, of Reversions, Remainders, Rents, Seigniories.

And here of *Attornments*; how, by whom, and when to be made.

And the several Effects thereof, viz.

1. To create a *Priority of Distress*, or *Action*, as in the Case of *Fines*, *Quid Juris clamat, Quem redditum reddit, Per quod Servitia*.

2. To pass the *Interest*, as in case of Grants, singly by Deed.

Thus far of the Nature of Deeds in reference to the Acquest of Lands.

But there are besides this, in relation to *Deeds passing Lands*, several Parts that usually occur in Deeds, and which take up large Titles, viz.

1. The Parties, and therein their Names, and Names of Purchase; as *Grantor*, *Grantee*, *Feoffor*, *Feoffee*.

2. The *Premises* of the Deed; contain-
ing,
1. Effe-

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1. Effectual Words to pass the Interest, as *Grant, Enfeoff, &c.*

2. The Thing granted, which takes in the whole Title of *Comprize*, and *Nient Comprize*, viz.

1. By what Names Things pass:

2. What Things are compriz'd with in the Grant, viz.

1. Things in Gross.

2. Things parcel.

3. Things incident, appendant, appurtenant, &c.

3. The *Habendum* of the Deed, which limits the Estate; and what Words are apt for this.

4. The *Reservation* or *Reddendum*; and what shall be said a good *Reservation*.

5. The *Covenants*; which are of Two Kinds:

1st, *Covenants personal*, and their Exposition.

And here of *Covenants*; as,

1. What shall pass with the Land, and what not.

2. Their Exposition.

2^{dly}, *Covenants real*, which is *Warranty*.

And here of that *Learning*; as,

1. What their *Kinds*;

General,

Special,

Lineal,

Collateral.

1. What their *Effects*:

1. By

1. By Way of *Action, Voucher, Warrantia Charta.*
 2. By Way of *Bar, or Rebutter.*
6. The *Condition or Defeasance.*

And here all the Learning of *Conditions and Limitations*; And incident to this Learning of *Deeds* fall in those Two great Titles, *viz.*

1. *Monstrance de Faits*; or where Deeds are necessary to be plead-
ed or shewn;
2. *Exposition de Faits*; which is full
of infinite Variety, according
to the Texture of Deeds, and
their several Clauses.

SECT. XXXVI.

Of Conveyances by Force of Statutes.

AND thus far of *Conveyances* according to the Course of the Common Law; and now I proceed to *Conveyances*, according unto, or by Force or Power of Acts of Parliament.

Conveyances according to, or by Virtue of Acts of Parliament, are of Two Kinds, *viz.*

1. By Way of *Bargain and Sale*, according to the Stat. 27 H. 8.
2. By Way of *Use*.

And this latter Way is either,

1. With

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1. With Transmutation of Possession; as,
By Feoffment or Fine.

2. Without Transmutation of Possession,
By Covenant to stand seized.

And this is a large Field, for all the Learning of Uses comes in here; as Of Considerations sufficient to raise it.

Contingent Uses, &c.
How destroy'd;
How revived.

3. By Way of Devise.

And here all that voluminous Title of Devises, and the Incidents thereto, may be introduc'd.

S E C T. XXXVH.

Concerning Customary Estates.

THUS far of Estates at Common Law; we come now to Customary Estates, viz. Tenant by Virge, or by Copy of Court-Roll.

And because this is a special Kind of Customary Estate, and I shall not have again to do with it, I shall shortly consider these Two Things, viz.

1. The Nature or Kinds of Estates grantable thereof.
2. The Incidents relative theretinto.

1. Touch-

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1. Touching the Nature of Estates grantable, the Custom directs it.

For by Custom it is grantable,

1. In Fee-Simple.

2. In Fee-Tail : And here of the Entailing Copyholds, where it may be, and how barred.

3. For Life or Lives.

2. Touching the Incidents relative to Copyholds, they consist either in,

[1. Modes of Acquiring : Or,

2. Manner of Transferring.]

Touching the Transferring the Interest of the Copyholder, it is done,

1. By Hereditary Descent : And here of what Effect or Use the Heir's Admission is.

2. By Surrender; which is either,

1. In Court.

2. Out of Court, into the Hands of the Lord, the Steward, Customary Tenants when warranted by the Custom.

And the Effect of such Surrender; where, when, and how it must be presented.

The Learning concerning Copyholds is grown very large, and takes in very many Particulars: For Instance;

1. Who is Lord to make a Grant or Admission: What a Dominus pro Tempore, or a Disseisor, may do therein.

2. Who is a Steward to perform that Office, and his Power therein.

3. What

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3. What shall be said a *Copyhold Manor*, or a *Copyhold Court*, to enable such Grants.

4. What shall be said a *Forfeiture* of a *Copyhold Estate*:

By *Waste*;

By *Alienation*;

By *Refusal to perform Services*.

Who shall be bound by such *Forfeiture*.

Who shall take Advantage of it.

What shall be a *Dispensation* with it.

Besides which, there are very many more *Considerables* will fall under the Title of *Customary Estates*, or *Copyholds*.

S E C T. XXXVIII.

Of Translation of Property by Forfeiture.

I Now come to those *Translations of Estates* which happen by Default of the Tenant in *Fee Simple*, viz. such as are *Forfeitures* of his Estate.

And these are of several Kinds:

1. *Forfeiture by Attainder*; either,

1st, Of *Treason*, which gives the Land to the King by the Common Law.

(And this lets in all the Learning touching *Offices*, *Petitions*, &c.) Or,

2^{dly}, Of *Felony*; whereby it escheats to the Lord; whereof before, p. 85.

2. *Forfeiture by Purchase in Mortmain* without Licence, whereby it goes to the Lord.

3. Forfeiture by *Cessing* from doing his Services *per Biennium*. (And here comes in the Learning of *Cessions*.)
4. Forfeiture by *Alienation contra Formam Collationis*.

S E C T. XXXIX.

Of Wrongs or Injuries. And First, Of Wrongs to Persons.

I Come now from the Consideration of *Rights* or *Jura*, to consider of *Wrongs* or *Injuries*; wherein I shall take this Order, *viz.*

First, I shall pursue the several *Natures* of *Injuries*, as they are severally applicable to those Things which are the Subjects where-to the several Rights aforesaid are adherent.

Secondly, Because it will be a shorter and plainer Way to mention the several *Natures* of the *Remedies* applicable to the several Kinds of *Injuries*, or *Wrongs*, I shall mention those Actions that are applicable to the several *Injuries*, together with the *Injuries* themselves; leaving the farther Explication of the Manner of Application of those *Remedies* unto the Third and Proper Head, concerning *Reliefs* or *Remedies*.

As to *Injuries*, or *Wrongs*, they are of Two Kinds, *viz.*

H

I. Such

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1. Such as are of *Ecclesiastical Conuzance*.

2. Such as are of *Temporal Conuzance*.

Such as are of *Ecclesiastical Conuzance*, are either,

1. *Criminal*.

2. *Civil*.

1. The Wrongs Criminal of *Ecclesiastical Conuzance*, are such as are *Publick Scandals and Offences*, wherein the Judge *Ecclesiastical* proceeds, either,

1. At the Prosecution of some Person: Or,

2. *Ex Officio*, & *pro salute animæ*; as In Cases of *Adultery, Fornication, Incest, Prophanation of Sacred Things, or Times, (or Places,) Blasphemy, Heresy, and divers others*.

2. Wrongs Civil of *Ecclesiastical Conuzance*, are of these Kinds, *viz.*

1. *Defamation* in some Particulars.

2. *Tithes*, their Right, Subtraction, &c. as also *Oblations, Mortuaries, Pensions*.

3. Causes of *Spoliation* in relation to *Benefices Ecclesiastical*.

4. Matters of *Matrimony and Divorce*.

5. *Wills or Testaments, and Administrations*.

Those Wrongs that are of *Temporal Conuzance*, are of Three Kinds:

1. Such as are of the *Conuzance* of the *Admiral's Court*; as *Piracy, Depredations, and Wrongs on the High Sea*.

2. Such

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2. Such as are of the *Constable* and *Marshals Court*; as, *Usurpation of Coats of Arms, Matters of Precedence, &c.*
3. Such as are of the *Conuzance* of the *Common Law Courts.*

This latter Head is very large and extensive; but in general, may be divided into Two Kinds:

1. Such as are *Criminal* or *Publick*, wherein the *Wrong-doer* is proceeded against *Criminally*. And these are to be distributed under the *Titles of Pleas of the Crown.*

2. Such as are *Civil* or *Private*; wherein at the *Suit* or *Prosecution* of the *Party injur'd*, he has *Reparation* or *Right* done.

Touching Injuries to Civil Rights or *Interests*, they must be distributed according to the *several Natures* and *Kinds* of those *Rights* which by those *Wrongs*, are injur'd: And since we have already before consider'd of *Two Sorts of Rights*, viz. *Rights of Persons*, and *Rights of Things*, I shall begin with those *Wrongs* that relate to the *Rights of Persons.*

And since in the *Distribution* we have made of the *Rights of Persons*, we have observed, That the *Rights of Persons* have a *double Consideration*, viz.

1. One *Absolute*, in reference to the *Person himself*. And,
2. Another *Relative*, with respect to the *Persons related to him.*

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We shall distinguish *Wrongs* accordingly. *Wrongs* therefore of *Common Law* *Conu- zance*, which are *Private* or *Civil*, are such as are done either,

1. By *Particular Persons*; or,
2. By *Countenance* of *Legal Proceedings*.

And the former Part of these *Wrongs*, are done either,

- 1st, To the *Rights* of *Persons*; or,
- 2^{dly}, To the *Rights* of *Things* annex'd to *Persons* in Point of *Property* or *Estate*.

As to *Wrongs* that are done to *Persons*, or in relation to the *Rights* of *Persons*, they are of *Two Kinds*:

1. Such as relate to the *Person* consider'd absolutely and in himself.
2. Such as relate to him, as he stands in some Kind of Relation to another *Person*.

As to such *Wrongs* as relate to the *Person* himself, they are of *Three Kinds*. Every *Man* has a *Right* to his own *Person*; and a *Wrong* done to that, is nearest to him, because a *Man* has the greatest *Propriety* in his own *Person*.

And the *Wrongs* thereunto are also of *Two Kinds*, viz.

1. *Wrongs* to his *Body*.
2. *Wrongs* to his *Name* or *Reputation*: For I reckon this amongst those *Wrongs* that are done to his *Person*.

I, The *Wrongs* to his *Body* are of *Two Kinds*, viz.

1. *Affaults*; as, *Beating*, *Maiming*, *Woun- ing* of a *Man*:

Wherein

Wherein the Law gives a double Remedy, viz.

1. *Preventional*; by Security of the Peace.
2. *Remedial*, by Action, either of
Trespass,
Assault,
Battery,
Wounding,
Appeal of Mayhem.

2. *Imprisonment*, without lawful or just Cause : 2 Inst. p. 55.

Wherein the Law also gives him a double Remedy, viz.

1. To remove or avoid the Imprisonment, as by *Habeas Corpus* into the King's Bench or Common Pleas, Writs of *Mainprise*, *De Odio & Atia*, *De Homine Replegiando*, &c.

2. To Recover Damages by Way of Compensation for it, by Action of *False Imprisonment*; or if the Imprisonment be lawful, but the Party bailable, and his Bail refused, in some Cases a special Action of the Case upon the Stat. 23 H. 6.

II. As to Wrongs done to his Name, they are of Two Kinds, viz.

1. *Scandal* by Words spoken, Libels, Pictures, &c. wherein the Remedy is to have Compensation in Damages by Action of the Case.

And here comes in all that large Title of *Action of Slander*, and what Words are scandalous.

2. Under Pretence of a Legal Prosecution, but false and malicious; as, for a false and malicious imposing some great Crime by Complaint to a Justice of Peace, or by preferring a Bill of Indictment falsely and maliciously.

The Remedy the Law gives, is,

1. Sometimes by an *Action of Conspiracy*,
2. Sometimes, and more ordinarily, by *Action upon the Case*.

SECTION XL.

Of Wrongs to Persons under Relation.

THE Wrongs that are done to a Person under some Kind of Relation, principally take in the Three Oeconomical Relations before mentioned; as,

1. *Husband and Wife.*

2. *Parent and Child.*

3. *Master and Servant.*

And some of the Civil; as,

1. *Guardian and Pupil.*

2. *Lord and Tenant, &c.*

I. *First,*

1. *First*, For Husband and Wife; as where the Wife is taken away from the Husband, the Law has provided a Remedy for him by Action of Trespass *De Uxore Abducta*, per quod Consortium amisit. So if she be beaten, a special Action of Trespass (on the Case) for beating his Wife.

2. As to Parent and Child: Wrongs of this Kind are either,

1. By taking away the Child under Age out of the Custody of the Parent, where the Remedy is Action of Trespass.

2. By taking away, and marrying the Heir within Age: The Remedy is *Trespass* or *Ravishment*, to recover Damages, and the Value of the Marriage.

2. As to Master and Servant:

1. If a Servant be retain'd by another before his Time is expir'd; Remedy is Action on the Case.

2. If a Servant be beaten, whereby he is disabled to work; the Remedy is Action of Trespass or Case, per quod Servitium amisit.

We come now to *Interests of Civil Relations*, and the Wrongs therein respect,

1. *Guardian* and *Pupil*.

2. *Lord* and *Tenant*.

3. *Lord* and *Villein*.

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1. As to the first of these: The *Guardian* has an Interest in the *Pupil* in these Two Kinds of *Guardians*:

1. *Guardian in Knights Service.*

2. *Guardian in Socage.*

If the Ward be taken away, or taken away and married, it is a Wrong to the Guardian, and remediable;

1. By *Trespas*.

2. By *Writ of Ravishment of Ward.*

3. By *Writ of Right of Ward.*

2. As to that of *Lord and Tenant*: If they be Tenants at Will, and either by Menaces, or by unlawful Distresses, they are driven away from their Tenancies, it is a Wrong which the Lord may repair himself in by special Action of the Case.

3. So if a *Villein* be forced from his Service, or beaten or maimed so that he is disabled to perform such Service, an Action of Trespas lies, *per quod Servitium amisit*.

S E C T. XII.

*Of Wrongs in relation to Rights of Things.
And First, of Things Personal.*

Hitherto of *Wrongs* as they relate to Persons, either absolutely, or under Relations *Oeconomical* or *Civil*; I come now to such *Wrongs* as relate to *Things*, and those are either,

1. To *Things Personal*.

2. To *Things Real*.

Wrongs relating to *Things Personal* are of these Kinds, *viz.* According to the Nature of the *Things*:

1. *Personal Things* in Possession.

2. *Personal Things* in Action.

I. As to *Personal Things* in Possession, *viz.* *Goods, Cattle, Money, &c.* the *Wrongs* there-to are of Two Kinds:

1. An unjust Taking, or a Taking and Detaining of them, which is an Injury, and for which the Party grieved has his Remedy, *viz.* either,

1. To have the *Things* themselves, (if detained) by *Replevin*.

2. To have Reparation in Point of Damages by Action, either of *Trespass Vi & Armis*, or of *Trover* and *Conversion*.

2. An

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2. An unjust Detaining, without an unjust Taking.

The Remedy :

1. The Things in Specie, by *Replevin*, if taken for *Damages* only ;
or,
2. *Trover* and *Conversion* for the Thing, or if it can't be had, for *Damages* by *Detinue*.

And although *Charters* concerning Land be in the *Realty* in respect of their Relation to the Land, yet they are not in themselves any more than Paper, or Parchment, and Wax ; and therefore are within the afore-said Rules, in respect of taking or detaining them.

II. *Personal Things in Action* are likewise of Two Kinds :

1. Such Things in Action as arise by express Contract or Agreement.
 2. Such Things in Action as arise by implied Contract, or *Quasi ex contractu*.
1. The former Kind are of Two Sorts :
1. By *Deed* or *Specialty*.
 2. Without *Deed* or *Specialty*.
1. Those that are *with* or *by Specialty* are also of two Kinds, *viz.*

Debts :

And the *Wrong* that relates to them is *Non-payment* according to the *Deed*.

The Remedy is Action of Debt, to recover the Debt it self and *Damages* for *Non-payment*.

2. Co

2. *Covenants* : *The Wrong herein is Breach of Covenant.*

The Remedy, Action of Covenant :
And here comes in the Learning of *Covenants*.

What Words make a *Covenant*.

What *Covenants* pass to the Assignees, &c.

2. Those that are without *Specialty*.

1. *Debts* :

The Wrong and Remedy the same as before, in Cases of Debt ; by *Specialty*.

And hither also may be referred Those Things, which though they favour of the *Realty*, are yet recoverable by *Action of Debt* ; as Rents reserv'd on Leases for Years, Relief, &c.

2. *Promises* ; for a good Consideration, whether they be *Promises* that arise by Law, or such as are *collateral*.

Remedy in all such Cases, is to recover *Damages* by *Action on the Case*.

And here comes in, *Warranty of Chattels upon Sale*.

2. Such Things in *Action* as arise by an *implied Contract* are many : for Instance ;

1. In *Contracts for Things*, it is generally intended, That none sell any Thing that he knows not to be his own ; if he does, an *Action on the Case* lies in Nature of *Disceit*.

2. In

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2. In Contracts for *Victuals*; is implied, That they are not *unwholesome*; if they be, an Action on the Case lies.
3. In Persons that undertake a *Common Trust*, it is imply'd, That they perform it; otherwise an Action on the Case lies.

As for Instance :

In the Case of,

1. A *Common Host*, is to secure Goods in his Inn.
2. A *Common Carrier* or *Bargeman*, to secure the Goods he carries.
3. A *Common Farrier*, that he perform his Work well, without hurting the Horse.
4. A *Common Tailor*, that he does his Work well; and so of other Tradesmen, &c.

S E C T

S E C T. XLII.

Touching Wrongs to Things Real, without dispossessing the Party; and their Remedies.

I Come now to those *Wrongs* or *Injuries* which are done to *Things Real*, and the *Rights* of them.

And these may be divided in these Two Kinds, *viz.*

1. Such as are without a *Removing* the Owner or Proprietor out of Possession.
2. Such as are with a *Remover* of him out of his Possession.

Those which are without a *Remover* out of Possession, are of several Kinds: I shall reduce 'em to these following, *viz.*

1. *Trespases* by breaking any Man's Ground-Hedges, &c. by the Party (Trespasser) himself, or by his Command, or by his Cattle, &c.

Remedy, to repair the Party in Damages, by Action of *Trespas*, *Quare Clausum fregit*.

2. *Nuisances* or *Annoyances*, either,

1. To *Interests* in Things Corporeal, as Houses, &c. by stopping Lights, erecting Lime-Kilns, or Things annoy-
ing another's Dwelling, or with-
drawing Water from a Mill, &c.

2. Or,

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2. Or, To Things Incorporeal ; as,
 1. To Chemins or Ways, by obstructing them, &c.
 2. To Markets, by erecting another Market too near them.
 3. So of Ferries, by erecting another too near.

And infinite more Instances may be given, the Title of Nuisances being very large.

The Remedies in all these Cases are either,

1. Without Suit ; to abate, or to remove them, if done to Inheritances Corporeal or Chemins.
2. By Suit ; as,
 1. Quod permittat, Assize of Nuisance, to remove the Thing, and recover Damages.
 2. Action on the Case to recover Damages. Vide Sect. 46. & 47.

3. Disturbances : And this principally concerns such Real Things as are Incorporeal : For Instance ;

1. Disturbance to present to a Church presentable : And this concerns Advowsons, and Right of Patronage.

And the Remedies relating thereunto are,

Quare Impedit ;
 Assize de Darrein Presentment ;
 Quare Incumbavit ;
 Ne Admittas ;
 Breve Episcopo ad admittend' Clericum.
 And

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And this is a vast and a curious Piece of Learning.

2. *Disturbance of a Person to enjoy his Franchises*; as,

Disturbing such as come to my Market, or to my Leet;

Forcing them to come to another Court;

Not permitting a Person to hold his Court, or take his Toll.

And many more of the like.

The common Remedy herein is by Action on the Case.

3. *Disturbance of Commoners to enjoy their Common*; surcharging the Common by one that has Common; or by putting in Cattle by one that has not Common; by erecting a Warren to the Prejudice of the Commoners.

Here the Remedy in some Cases may be by *Admeasurement, Assize, Quod Permittat*:

But in most, and indeed in all Cases of this Nature, it is usual by Action on the Case.

4. *Disturbances of Ways.*

The like Wrongs;

And the like Remedy.

4. The Fourth Sort of Injuries are, *Substractions of Customs, Duties, or Services Real*; as

Suit to Court;

Suit to Mill;

Homage;

Fealty;

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Fealty ;
Rents, &c.

The Remedies here are various :

For, 1st. If the Services are accompanied with a *Tenure*, the ordinary Remedy is either,

1. *Without Suit*, by *Distress*.

And here of *Distresses*, *Arrows*.

ries, &c.

2. *With Suit* ; and then,

1. If they are Rents reserved on Leases for Years, the Remedy is *Action of Debt*.

2. If they are Rents of Freehold, Remedies are by *Affize* in case of *Seisin* and *Disseisin*.

2^{dly}, If those Services are without *Tenure*, as Suit to Mill by Custom, &c. the Remedies are, *Setta ad Molendinum*, Action on the Case.

5. The Fifth Sort of Injuries is *Waste*, or *Destruction*.

And this Injury is of Two Kinds, according to these Relations, *viz*.

1. In relation between the Owner of the Soil, and he that has a Profit appropried out of it ; as, *Estovers*, *Pawnage*, &c.

If the Owner of the Soil destroys the Wood, the Remedy lies by *Affize*.
Action on the Case to recover Damages.

2. In

2. In relation between the particular Tenant and he that has the Reversion or Remainder of Inheritance ; as *Waste* in Houses, Woods, Lands, &c. is a Disinheritance to the Reversioner, who has Remedy either,

1. Preventive by *Estrement*, prohibiting *Waste*, which also lies against a Tenant, where the Land is in Suit : Or,

2. Remedial, by Action of *Waste* ;
In the *Tenet* ;
In the *Tenuit*.

And here comes in a great Flood of Learning :

What shall be said *Waste* ;

When, and against whom it lies, ^{*Supra,*}
&c. _{*p. 78.*}

And although under this Title of *Wrongs*, without Removal of Possession, I have brought in Remedies by *Affize*, &c. which always supposes a Dispossession, yet really it is no Dispossession in those Cases before instanced, because they concern *Things Incorporeal* ; wherein, though the Party may admit himself disseised, it is but a Disseisin at Election, and rather made a Disseisin by his bringing an *Affize*, which the Wrong-Doer shall not dispute, than truly so. And now :

I SECT.

S E C T. XLIII.

*Concerning Wrongs which carry with them
an Amotion of Possession.*

THE Wrongs which carry with them an Amotion of Possession are of Two Kinds, and concern,

1. The Rights of Chattels.
2. The Rights of Freeholds.

I. As to the Rights of Chattels, whereof the Party is dispossessed by a Wrong-Doer, they are these, viz.

1. Leases for Years.

The Remedy is by *Ejectione firmæ*; or if by the Reversioner, *Quare ejecit infra Terminum*.

In both which, at this Day, he recovers Damages, and the Possession of his Term.

2. Wardships and Holding over for single or double Value.

The Remedy is, *Quare intrusit Maritaggio non Satisfacto, Ejectione Custodiæ*; and against a Stranger, a Writ of Right of Ward.

3. Tenants by Stat. Merchant, Stat. Staple, and Elegit: Though they have but Chattels, yet the Statute gives them Remedy for their Possession by Affize.

II. I come to the Rights of Freeholds, and the Wrongs done to them, together with an Amotion

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Amotion of the Possession: And those *Rights* are of two Kinds, *viz.*

1. Some only compatible to them that claim not only a Freehold, but any Inheritance.
2. Some that are common to any that have a Freehold only.

And accordingly, their *Remedies* will be severally diversify'd.

These *Wrongs* are of several Kinds, *viz.*

Abatement ;

Intrusion ;

Disseisin ;

Usurpation ;

Discontinuance ;

Deforcement.

- 1st, *Abatement* is where one enters after the Death of the Ancestor, before the Heir enters.

The *Remedy* is according to the Nature of the Descent from his Ancestor,

By *Affize of Mortdancestor* ;

Writs of Aile, Besaile, Cofmage.

- 2^{dly}, *Intrusion* is an Entering or Continuing in Possession after an Estate for Life determined.

The *Remedy*: He in the Reversion or Remainder may enter ; or if his Entry be taken away, has his Writ of *Intrusion*.

- 3^{dly}, *Disseisin* is a large Title, and is an unlawful Entry and Ouster of him that has an actual Seisin and Freehold.

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And it is either,

1. *With Force*: In which Case the Party disseised has his Remedy, either,

1. By Writ of *Forcible Entry* upon the Stat. 8 H. 6. to recover the Possession, and Damages.

2. By Affize of *Novel Disseisin* to recover his Possession, and Damages, and the Party to be fined and imprison'd for his Force.

3. By Writ of *Entry* in Nature of an Affize, to recover his *Seisin* and Damages.

2. *Without Force*: And for this he has Remedy by *Affize*, or *Writ of Entry*, *ut supra*.

Now both these *Disseisins* are either of *Things Incorporeal*, or *Things Corporeal*.

1. Of *Disseisins Incorporeal*: This is not always a *Disseisin* at the Election of the Freeholder.

And *Disseisins* of *Inheritances Incorporeal* are various, according to the various Kinds of *Incorporeal Inheritances*; as,

Commons;

Profits appendre in another's Soil;

Offices;

Tithes;

Rents by Rescue;

Replevin;

Enclosure

Enclosure ;

Denial.

2. Disseisins of Corporeal Inheritances are of Two Kinds :

1. With an *Actual Ouster*, as is requisite between

Joint-tenants.

Parceners,

Tenants in Common.

2. Without an *Actual Ouster*, even by the *Disseisee's* waving of Possession upon an Entry made.

And all these Kinds of *Disseisins* are done either to the Party himself, or to his Predecessor or Ancestor.

And the Remedy is,

By *Writ of Entry sur Disseisin.*

And these Writs of *Entry sur Disseisin* are either,

1. In Nature of an Affize against the first Disseisor ; or in the Degrees, as in the *Per*, or *Per & Cui*, against the *Feoffee* of the Disseisor or his *Feoffee* : Or,
2. They are in the *Post*, when the Degrees are spent, or when the Tenant comes in under the Disseisor in the *Post* ;

As the *Lord* by *Escheat*, &c.

And this Learning of *Disseisins*, of *Affizes*, and of *Entry sur Disseisin*, are large and comprehensive Titles, and of great Variety and Extent.

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4thly, *Usurpation*, This Title refers only to *Advowsons*; where one that has no Right to present, presents to a Church, and his Clerk is admitted and instituted, and continues in by Six Months.

The Remedy is by *Writ of Right of Advowson* for the Patron in Fee-Simple.

And this also takes in all the Learning of *Advowsons*, and the Provisions made by the Stat. *West. 2.* to save the Right of *Possessory Actions* against *Usurpation*:

1. Where it is upon the Predecessor.
2. Where it is upon the Ancestor in Tail.
3. Where upon Tenant for Life, Guardian in Chivalry, &c.

5thly, *Discontinuance*: This is where he that aliens has not the full Right, yet it puts the Party injur'd thereby to his real Action; as in these Instances, viz.

Co. Lit. p.
326. b.

1. When the *Alienation* is by *Tenant in Tail*, the Remedy is for the Heir in Tail, by *Formedon in Descender*; for the Reversioner, by *Formedon in Reverter*; and for the Remainder Man, by *Formedon in Remainder*.
2. When the *Alienation* was by the Husband seized in Right of the Wife; at Common Law the Wife was driven

ven to her *Cui in Vita*, in or out of the Degrees, as the Case fell out.

But now she may enter (unless a Descent be cast) after her Husband's Death, by the Statute

11 H. 7.

3. When it was by a Bishop, &c. aliening without the Assent of the Dean and Chapter, at Common Law his Successor was driven to his Writ of Entry *Sine Assensu Capituli*. But this is remedied by Stat. 1. & 13 Eliz.

The Learning of *Discontinuances* is also very curious; as,

Who may discontinue; who not.

What shall be a *Discontinuance*; and what not.

And as the Learning thereof is ample, so is that of the Remedies thereof, by *Formedon*, &c.

6thly, *Deforcement*: And this is a larger, and a more comprehensive Expression than any of the former; for a *Disseisor*, *Abator*, *Intruder*, *Discontinuer*, *Usurper*, and those that claim under them by *Feoffment* or *Alienation*, are all *Deforceors*. But the proper Application of the Word is to such a Person, who, tho' he has not a just Right, has yet recover'd against, or barred him that has the true Right, either,

1. *By Default.* And then the Remedy for the Party so deforced is,

If he had only a particular Interest, by *Per quod ei Deforceat.*

If he were Issue in Tail of him that so lost, by *Formedon,*

If Tenant in Fee-simple, or his Heir, by *Writ of Right.*

2. Or in a *Real Action* of an Inferior Nature ; as *Writ of Entry, &c.* And then,

1. Of the Issue in Tail of him that so lost, or is barred. The Remedy is, by *Formedon in Descender.*

2. Of the Tenant in Fee-Simple that so lost, or is barred. The Remedy is, by *Writ of Right.*

S E C T. XLIV.

Of Wrongs that have the Countenance of Legal Proceedings of Courts.

Hitherto I have proceeded in examining *Wrongs* done by Parties themselves ; I now come to consider of *Wrongs* done

done by Courts or their Officers, in relation to Legal Proceedings.

And they are of Two Kinds, *viz.*

1. When the Court proceeds in a Cause whereof they have no Jurisdiction.
2. When they proceed in Causes whereof they have Jurisdiction, but proceed erroneously.

I. The former of these is a Wrong, and the Party has his Remedy or Relief therein.

1. By not submitting to the Sentence or Judgment, and bringing his Action against them that execute it.
2. By Prohibition from a superior Court ; as when an Ecclesiastical Court proceeds in a Cause of Temporal Conuzance ; or an Inferior Court, that has a limited Jurisdiction, holds Plea of a Thing done out of its Jurisdiction.

2. The latter is when they proceed erroneously, or by committing some Mistake in a Matter within their Jurisdiction.

This I call a Wrong: Not that the Party that supposes himself injured has any Remedy against the Court, or the Judge that thus proceeds ; for if Men should suffer barely for Error in Judgment, when there is no Corruption, no Person would be Judge in any Case. But I call it a Wrong, because, in Truth, the Party has a Right to be *relieved* against such Judgment : And,

I. In

The Analysis of the Law.

1. In Causes Ecclesiastical or Maritime, the Law has provided a Relief against an erroneous Judgment,
By Appeal to other Judges.

2. In Causes of Common Law Conuzance, Errors or Mistakes in Judgment are revers'd.

1. In Courts not of Record, as County-Courts, and Courts-Baron,
By Writ of False Judgment.

2. In Courts of Record, wherein Error may happen divers Ways,
viz.

1. By Error of the Jury in giving a False Verdict :

The Remedy is by *Attaint*.

2: By Error or *Disceit* ; if the Sheriff returns a Party as summoned when he was not, whereby Judgment is against him by Default.

The Remedy is, by *Writ of Disceit*.

3. By Error of the Court. And then

The Remedy is,

Writ of Error in a superior Court.

Audita Querela.

And here may come in the Learning of *Writs of Error*, and *Audita Querela's*.

S E C T.

S E C T. XLV.

Concerning Remedies, and the Method of obtaining them.

IN the former *Sections* I have consider'd of the various *Kinds of Wrongs or Injuries*, and under those *Distributions* have mentioned their ordinary Remedies, and thereby have much contracted this Title; wherein I shall only give some general Rules relating to the Manner of the Application of those Remedies, leaving every particular *Remedial Writ*, together with the *Process* belonging to it, to be consider'd and digested under their several Titles in the former *Sections*.

Remedies for *Wrongs* are according to the Nature of those *Wrongs*, viz.

1. *Ecclesiastical.*
2. *Civil.*
1. *Ecclesiastical Remedies* are such as are applicable to *Wrongs of Ecclesiastical Conu- zance*, and take in or include these Two Generals, viz.
 1. The *Courts or Places* where the said *Remedies* are to be had.
 2. The *Process* preceding Judgment and Execution relating thereto.
2. *Civil or Temporal Remedies* are such as concern either,
 1. *Maritime Injuries.*
 2. *Military Injuries.*
 3. *Civil or Common Law Injuries.*

The Analysis of the Law.

1. In Reliefs or Remedies for *Maritime Injuries*, are considerable,

1. The Court of Relief: The *Admiral-Court*.

2. The Process preceding Sentence, &c.

2. In Remedies for *Military Affairs*, or Matters of *Arms and Honours*,

1. The Court is the Court of Honour, or *Military Court*.

2. The Process, Sentence, and Judgment.

(Now of little Use.)

S E C T. XLVI.

Remedies at Common Law: And First Of those without Suit.

THE Law in many Cases provides a Remedy *without Suit*, which in general is either,

1. By *Act of the Party*.

2. By *Act in Law*.

Remedies allowed by the Party's own Act, are in reference,

1. To *Things Personal*.

2. To *Things Real*.

1. In reference to *Things Personal*:

1. If another does wrongfully take or detain my Goods, my Wife, my Child,
or

or my Servant, I may lawfully re-
take them again, if I can, so I do it
not riotously.

2. So I may defend my self (or them)
by Force, if assaulted.

2. In reference to *Things Real.*

In these and some other Cases, the
Law allows a Man a Remedy with-
out being driven to it, *viz.*

1. In Cases of *Nuisance* done to my
Freehold, I may remove them, if I
can, without Riot; as,

1. To remove an Obstruction out
of my Way.

2. Or the Over-hanging of ano-
ther Man's House over mine.

3. Or the Obstruction of Water
running to my Mill.

2. In Cases of *Rents*, I may distrain
the Goods or Cattle that are Levant
and Couchant upon the Tenement
charged therewith.

3. And so in Cases of Cattle doing
Damage upon my Ground, I may
distrain upon my Ground Damage
Feasant. And so I may distrain
Cattle that are sold, for my *Toll*.

3. In Reference to *Lands*.

1. I may distrain, and maintain my own
Possession against any Person that
would eject or disseize me.

2. Where I have a Right or Title unto
Lands, and my Entry not taken away,
I may gain the Possession by my En-
try.

The Analysis of the Law.

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or

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2. So I may defend my self (or them) by Force, if assaulted.

2. In reference to *Things Real.*

In these and some other Cases, the Law allows a Man a Remedy without being driven to it, *viz.*

1. In Cases of *Nusance* done to my Freehold, I may remove them, if I can, without Riot; as,

1. To remove an Obstruction out of my Way.

2. Or the Over-hanging of another Man's House over mine.

3. Or the Obstruction of Water running to my Mill.

2. In Cases of *Rents*, I may distrain the Goods or Cattle that are Levant and Couchant upon the Tenement charged therewith.

3. And so in Cases of Cattle doing Damage upon my Ground, I may distrain upon my Ground Damage Feasant. And so I may distrain Cattle that are sold, for my *Toll*.

3. In Reference to *Lands*.

1. I may distrain, and maintain my own Possession against any Person that would eject or disseize me.

2. Where I have a Right or Title unto Lands, and my Entry not taken away, I may gain the Possession by my Entry.

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And this necessarily draws into Examination these Two Things, *viz.*

1. *Titles of Entry* ; which are either by Breach of a Condition, in Fact or in Law annex'd to an Estate that I have parted with, or my Ancestor.

And here comes in, *Of Conditions* ; what are good, and what not ; when and to whom it gives an Entry ; and how *destroyed or suspended*.

2. *Rights of Entry* : And this lets in all those Considerations that concern the Titles of *Entry Congeable*, of *Descents that toll Entry*, or *Continual Claim*, of *Avoiding Descents by Infancy*, by Stat. 34 H. 8. But regularly ;

1. In *Personal Things* in Action, as for *Debts*, or *Covenants*, or *Promises* : Or,

2. As to *Rights of Real Things*, where the Entry is by Law taken away, the Party cannot be his own Judge, but must have Recourse to the Courts of Common Justice, except in the Cases following, *viz.*

By Act in Law, in some Cases without Suit, the Party shall have Remedy, where *by his own Act* he cannot ; as,

1. In *Things Personal* ; as if the Debtor makes the Debtee Executor, he may pay himself.

2. In *Things Real* ; as where a Man's Entry is taken away ; as by *Descent*, or by *Discontinuance* ;

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ance; yet if he come to the Possession without *Folly* or *Co-vin*, he shall be remitted.

And here all the curious Learning of *Remitters* comes in.

S E C T. XLVIII.

Concerning Remedies at Common Law. by Suit.

Hitherto concerning *Wrongs* and *Injuries* in relation to *Things* both *Real* and *Personal*, and Remedies for the same *without Suit*; I now come to consider of *Remedies by Suit*, and the Means or Method of their Application.

Remedies by Suit seem to be of Two Kinds :

1. Such as the Parties provide for themselves by mutual Consent.
2. Such *Remedies* as the Law provides for them.

I. *Remedies* that Parties provide for themselves are of Two Kinds :

1. By their own immediate Accord.
 2. By transferring the Decision of it to others.
1. The former of these, *viz.* The *immediate Consent of the Parties*, is that which in Law is called an *Accord*, which, with Satisfaction accordingly made, is in some

The Analysis of the Law.

6 Co. p. 44.

some Cases of *Personal Injuries* a Bar to any other Remedy.

And this lets in the Learning of *Accords* and *Concords*; what are good, and what not; where they are a Bar, and where not.

2. The latter of those, *viz.* The transferring the Decision to others; which,

1. If to Two, or more, is called an *Arbitrement*.

2. If to one, an *Umpirage*.

And here the large Learning of *Arbitrements* and *Awards*; what a good Submission; what a good Award, or not; what Remedy upon it, when and where it is a Bar in *Personal Actions*, &c.

II. Secondly, Such Remedies as the Law provides, are also of Two Kinds, *viz.*

1. Such Remedies as the Law provides *without Suit*; whereof before.

2. Such Remedies as the Law provides in the Courts of Justice, settled by Law, and according to those Constitutions touching *Actions* and *Suits*, that the Law has provided and instituted.

And this takes in these Considerations, *viz.*

1. The Courts of *Judicatories*, established by Law, for recovering of Rights, and redressing of Wrongs.

2. The Remedies themselves by certain Writs instituted by Law, and applicable to those several Wrongs.

3. The Prosecution or Pursuit of those Remedies in the said Courts.

1. The

1. The First of these concerns the large Learning of the *Jurisdictions of Courts*: And forasmuch as there are several entire Tracts written thereon, and I have before touched upon them, I shall here forbear to say any Thing further herein; only that that Learning may with Reason enough be transferr'd hither, at least some Particulars thereof.

2. The Second, touching the Natures and Applications of those Remedies, I have in the former *Sections*, under every several Kind of *Wrong* or *Injury*, mention'd the respective *Remedy*, and therefore shall not again repeat it here.

3. The Third, which is the Prosecution, or *Pursuit*, of those Remedies, is the Business of this *Division*.

But before I enter upon that Matter, I shall premise these Two Things, *viz.*

First, That the best Way to meet with all the Titles of the Law in this Business, will be to pursue the same in the Order and Method of the Proceedings themselves, without any other Distribution.

Secondly, That there are some Things wherein the Pursuit of a *Real Suit* and *Personal* do differ; as in the *Process*, the *Judgment* and the *Execution*: But in most other Things they do agree, or, at least, the Pursuit of a *Real Action* contains all the general Learning of a *Personal Action*, and much more.

Where therefore there is a signal Difference, I shall observe it by the Way, without running through the whole Proceedure of a *Real* and *Personal Action* distinctly; and shall only here observe, that the General Parts of a Suit are these:

1. The *Process*.
 2. The *Pleading*.
 3. The *Issue*.
 4. The *Trial*.
 5. The *Judgment*.
 6. The *Execution*.
 7. The *Appeal*.
-

S E C T. XLVIII.

Of Process and Appearing.

I. **F**irst, Where a *Wrong* is done, or a *Right* detain'd, the Party injured is to make his Application or Suit for that *Remedy* which the Law ordains; and in order thereto, to take out such (*Writ* or) *Process* as the Law (on the Circumstance of his Case) requires.

The (*Common, Usual*) Ordinary *Processes* are as follow:

1. In *Personal Actions*,
Summons, Attachment, Distress, Capias, Alias, Pluries and *Exigent*, and in some it begins with *Attachment*.

2. In

2. In Real Actions,

'Tis Summons, Grand Cape, and Judgment, or after Appearance, Petit Cape, and Judgment.

3. In Mix'd Actions,

In Assizes, Attachment, and upon Default, the Inquest taken by Default.

In Waste, Attachment and Grand Distress, and an Inquiry of the Waste, &c.

Every Process gives the Defendant a Day in Court; and this lets in these several Things, viz.

Four in Court, and the Variety of it.

And incident to this, is,

Adjournment; and,

Discontinuance.

And at that Day or Four in Court, the Defendant or Tenant either appears, or not appears.

Here of Appearance, And its Diversity:

1. By Guardian, (or Prochein Amy.)

2. By Attorney.

3. In Person.

If there be not an Appearance,

1. Either a Default is made:

And here of the Process upon Default,

1. In Personal Actions.

2. In Real Actions.

2. Or there is an Excuse of Appearance.

And therein save Default;

1. By Protection.

2. By Essoin prayed.

And here all the Learning of Essoins;

Their Nature,

Their Diversity; as

K 2

Common

Mirror,
c. 5. § 1.

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*Common Essoins,
Service le Roy, &c.*

On the other Side, as to the Plaintiff:

1. The Plaintiff either appears ; or,
2. Makes Default, and thereupon a Non-prosecution.

And here of the Nature and Variety of
Nonsuits ;
Retraxits, &c.

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Of Pleading.

II. **S**Econdly, I come to Pleading.

If both Parties appear, the Plaintiff declares or counts.

And here of,

1. Counts.
2. Declarations.

And the Defendant or Tenant's Part is after Imparance to plead.

And such Plea is either,

1. Dilatory ; or,
2. To the Matter or Right of the Complaint.

1st, Dilatory Pleas are of several Sorts :

1. To the Jurisdiction of the Court :
 1. From the Place where the Suit arises.
 2. From the Thing in Controversy, as, Ancient Demeſn.

2. To

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2 To the *Impotency*, or *Non-ability* of the *Plaintiff*, which is very various; as,

1. *Alien* } *Amey.*
 } *Enemy.*

2. *Outlawry* } *In Personal Actions.*
 } *For Felony.*

3. *Excommungement.*

4. And formerly *Villanage.* And

5. *Profess'd.*

3. In *Abatement.*

And this either,

1. Of the *Count.*

2. Of the *Writ.*

4. *View demanded.*

And this is a large *Title.*

5. *Aid prayed:*

1. Of the *King.*

And here of *Rege Inconsulto Procedendo.*

2. Of a *Common Person.*

And here of *Aid.*

The different *Kinds* of *Aid*; as,

1. Of the *Reversioner* or *Re-mainder-Man.*

2. Of the *Patron* and *Ordinary.*

6. *Voucher*: Which is a very large *Title.*

And here of *Voucher*;

In what *Action*;

Of what *Person.*

Counter-Plea of *Voucher.*

Process against *Vouchee.*

Pleading of *Vouchee.*

Recovery in *Value.*

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7. Age Prier :

1. For *Minority* of the Demandant.
2. For *Nonage* of the Tenant.

And here of *Prier in Aid of Vouchee*,
&c.

And all the Learning of *Age*.

And herein comes also, *What*
and when Pleas Dilatory are Pe-
remptory,

After Demurrer ;

After Trial.

And of *Pleas in Abatement* after
the last Continuance.

2dly, *Pleas* that go to the *Right* or *Merit*
of the Complaint, are of Two Sorts :

1. *Pleas to the Action*, which denies the
Substance of the Complaint :

And commonly make either,

1. A *General Issue* ; as,

In Trespass, Not guilty.

In Debt upon a Contract, Nil Debet,

In Assumpsit, Non assumpsit.

In Affize, Nul Tort, Nul Disseisin.

In Dower, Nunque de seize de Dower.

In a Writ of Right, That the Te-
nant has more Right to hold,
than the Demandant has to de-
mand.

2. Or a *Common Issue* ; as,

In Debt on Bond, or Action of Cove-
nant, Nem est Factum.

In an Affize of Mortdancesfor Aile,
Besale, &c. That the Ancestor
was never seized.

2. *Pleas in Bar*: These are very various and different, according to the several Kinds of the *Tenants* or *Defendants* Case. And lets in all the Learning of *Bars*, &c. as,

Bars are either such as are,

1. *Proper*.
2. *Common*.

Pleas in Bar therefore considerable,

1. In their (*Nature* or) *Matter*.
2. In their *Qualities* or *Manner* of *Pleading*.

I. *Bars*, according to the *Nature* of the *Action*, and *Case* of the *Parties*, are very various and different (and therefore here all the Learning of such *Bars* comes in), yet somewhat concerning them follows:

1. *Proper Bars* are,

1. Such as are applicable only to *Real* or *Mixed Actions*; as,

Fine;

Feoffment;

Release of Right;

Warranty, &c.

Of the *Plaintiff*;

Or his *Ancestor*.

2. Such as are proper to *Personal Actions* only; as,

Accord with *Satisfaction*;

Arbitrament;

Performance,

1. Of the *Condition*.

2. Of the *Bond*.

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2. Such Bars as are common to both, yet diversify'd oftentimes with such Diversifications as are applicable to the Nature of the Action; as,

1. Release of Action.
2. Limitation of Time by Act of Parliament elaps'd.
3. Estoppels.

And here of the several Kinds of Estoppels:

1. By Matter of Record.
2. By Matter in Pais; as, Deeds Indented or Poll.

And here of the whole Learning of Estoppels.

☞ For note, Estoppels are not only the Matter of Bars, but of Replications, Rejoinders, and all other Pleadings.

II. Concerning Bars as to their Qualities or Manner of Pleading, the same common Rules of Pleading for the most part concern all Kinds of Pleading.

And therefore I shall here shortly insert them once for all, viz.

1. That the Plea be single, and not double. And here of Double Pleas.
2. That it have convenient Certainty of Time, Place, and Persons.
3. That it answer the Demandant's or Plaintiff's Count or Complaint.
4. That it be so pleaded, that it may be try'd.

When the Defendant has pleaded, what next follows is, The Plaintiff or Demandant answers

answers the Defendant's *Plea*; and this is called a *Replication*.

(And here of the general Rules, &c. of *Replications*,) viz.

That it be,

1. *Certain*.

2. *Single*.

3. *Answering the Bar, &c.*

And this *Replication* either,

1. *Denies or Traverses* the *Bar* or *Plea* of the Defendant; and then an *Issue* is tender'd, which regularly must be joined in by the other Party, and then the Parties are at *Issue*.

And here all the Learning of *Traverse*; what is traversable, or not; how it must be made, either *simply without* an *Inducement*, or *with* an *Inducement*; and concluding *Absque hoc* to the Matter alledged by the Defendant.

2. Or *Confesses and Avoids*.

And here all the Learning of *Confess* and *Avoid*; and then there is no *Issue* made by the *Replication*: But possibly the Pleadings run on to *Rejoinder*, *Surrejoinder*, *Rebutter*, *Surrebutter*.

For if the Plaintiff replies so as no *Issue* be offer'd, this gives Occasion to the Defendant to *rejoin*.

And here of *Rejoinders*, and how he must maintain his *Bar*, and not depart from his *Plea*.

And here of *Departure in Pleading*.

SECT.

S E C T. L.

Of Issues.

III. **T**HUS far of *Pleading* : Now by this Time either by the *Plea*, *Replication*, *Rejoinder*, &c. the Parties are descend-
ed to an *Issue*, viz. To something affirm'd by the one Party and denied by the other, which *Affirmation* and *Denial* is called an *Issue* ; for now the Parties have no more to do, unless a Matter happen to emerge after *Issues* join'd, and the last Continuance.

This, if it be pleaded, is called a *Plea puis le Darrein Continuance*.

So that their Business being at *Issue*, they have no more to do but to expect the *Trial* and *Determination* of that *Issue*.

Now *Issues* are of these Kinds, viz.

1. An *Issue* join'd upon a Matter of *Law*, which is to be determin'd by the Court.

And this *Issue* is called a *Demurrer*.

2. An *Issue* of *Fact*, which is of Two Kinds ;

1. An *Issue* join'd touching a Matter of *Record*, on *Nul tiel Record* pleaded, &c.

2. An *Issue* joined touching a Matter in *Pais* ; as,

Whether such a Deed were made.
Whether such a Feoffment were executed, &c.

S E C T.

S E C T. LI.

Of Trials.

IV. **A**ND now *Issue* being join'd between *vide Co. 9.* the Parties, they have no more *fol. 30.* to do but to expect the *Trial* of that *Issue*; and for that End they have *Days of Continuance* given.

Here of *Continuances, &c.*

Trials are of several Kinds, according to the Nature of *Issues*, and the several Appointments and Directions of the Law touching the same, *viz.*

1. *Trials by Record*; as,
When *Issue* is join'd, whether there be any such Record or no.
2. *Trials by Inspection*; as,
Upon Error to reverse a Fine levy'd by an *Infant*, or in *Audita Querela*, to avoid a Recognizance acknowledged during his *Minority*.
3. *Trials by Proofs*; as,
Where *Issue* in *Dower* is, whether the Husband be living or not.
4. *Trials by Examination*; as,
Where an Action of Debt upon Account is brought for Things not lying in Account.
5. *Trials by Certificate*:
 1. Of the *Constable* and *Marshal*, whether the Party be in Service.

2. Of

The Analysis of the Law.

Of the Bishop, by Mandate from the Secular Court, as in case of General Bastardy.

So of Issues upon the Right of Marriage between the Parties to the Suit.

So of Plenarty by Institution into Churches.

6. Trials by Battel:

7. Ordinal.

1. In Appeals.

2. In a Writ of Right.

8. Trials by Jury.

(And this takes in a large Field of Learning.)

Trials by Jury are,

1. Extraordinary.

2. Ordinary.

*Medietas
sem Lin-
gua.*

1. Extraordinary: In Writ of Right;
In Attaint. *Quare Appeals.*

2. Ordinary: By Twelve Men.

Wherein consider;

1. The Process to bring in the Jury,

In C. B. by *Venire Facias* & *Habeas Corpus.*

In B. R. by *Venire Fac' & Distringas Furatorum.*

2. The Tales for want of a full Jury appearing.

3. Challenges of all Sorts:

1. To the Array.

2. To the Polls.

4. The Oath of the Jury.

5. The

5. The *Evidence* to be given to the Jury :
What allowable to be given;
And when.
 6. *Verdict* of the Jurors :
 1. General Verdict.
 2. Special Verdict.
 7. What Defaults or Miscarriages impeach the Verdict.
 8. The *Postea*, or Return of the Verdict by the Judges of *Nisi prius*.
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227. b.

S E C T. LII.

Of Judgment.

V. **T**HE *Fifth* Act in this Business of *Prosecution* or *Suit*, is *Judgment*.
(And here the whole Learning of *Judgments*, comes in) *viz.*

I. What shall be sufficient to stay *Judgment*.

And herein,

1. Of arresting *Judgments*.
2. Of reversing *Judgments*.

II. Upon what it is given; which for the most Part is upon these Premises (or *Precedents*)

1. Upon *Default* after *Default*; as in *Real Actions* after the grand Distress in

Waste;

Quare Impedit.

2. Upon

The Analysis of the Law.

2. Upon Confession.

Nihil Dicit;

Non sum Informatus.

3. Upon Demurrer.

4. Upon Tryal of the Issue, according to the various Methods of Trial above mention'd.

III. The several Kinds of Judgments.

1. In Suits Real.

2. In Suits Personal.

1. *Interlocutory*, and not final; as,
Awards upon the Writ affirm'd, or
other *dilatory Pleas*, where the Judgment
in many Cases only is,
Respondeat ouster.

2. *Final*, but not compleat :
And that either,

1. *Incompleat* in Part, but compleat
in the Residue; as,

Where the Judgment is given
for the Thing demanded,
but the Damages not yet in-
quired of.

2. *Incompleat* in the Whole; as,
Where a Judgment is given for the
Party to recover his Damages,
where the Damages are the Prin-
cipal, wherein,

The *Compleat Judgment* is not
given till the Writ of Inqui-
ry return'd.

3. *Final and Compleat*, with respect to
the Action upon which it is given.

4. *Final,*

4. *Final*, not only as to the Action upon which it is given, but to all other Actions (touching that Thing ;)

as,

Judgment final, in a Writ of Right after the Issue joined, &c.

IV. The Forms of Entry of Judgments.

S E C T. LIII.

Of Execution.

VL THE Sixth Act in this Business of Suit, is *Execution*.

This is a great Field of Learning.

Executions seem to be of Two Kinds :

1. Within the Year.

2. After the Year.

I. The former of these is also of Two Kinds :

1. In reference to Lands recover'd.

2. In reference to Debts or Damages recover'd.

First, In relation to Lands recover'd, Two Things are considerable :

1. The Writ or Mandate of *Execution*.

2. The *Execution* of the said Writ.

I. Touching the former ;

The *Writ* or *Mandate* it self is of Two Kinds, in relation to the *Estate* recover'd :

1. If

1. If a Freehold, *Hab' Fac' Seis-*
nam.
 2. If a Chattel, *Hab' Fac' Possessio-*
nem.

I do not here meddle with the *Execu-*
tions of other Kinds of Writs, as *Quod*
Permittat, Replevin, &c. because they
 may come in in the former *Section*,
 where the Writs themselves are men-
 tioned, and they are various.

2. Touching the latter;

In the *Execution* of the Writ is conside-
 rable :

1. The Officer that is to make it.
 And here of the Office of Sher-
 riff;

The Manner of his Ma-
 king ;

His Power ;

His Duty in making Re-
 turns, &c.

2. The Manner of doing it.

And here of the *Posse Comitatus.*

Sed vide ante, Of Sheriffs.

Secondly, In reference to *Debts* or *Dama-*
ges recover'd, there are also considerable ;

1. The Nature of the *Process.*

2. The Manner of its *Execution.*

The *Process* it self is of the following
 Kinds:

And so are the Methods or Manner of
 the *Execution.*

(*N. B.* They are herein join'd
 together.)

1. The Body only, by *Capias ad Satisfaciend.*

And here of *Capias's* :

(Where it lies ;)

How executed ;

When with, and when without,
breaking open Doors.

What Kind of Execution it is ;

Whether without Satisfaction.

And here of *Non omittas* :

As also of *Escapes*.

2. Goods only, by *Fieri Facias*.

And here of that Learning :

How, upon what, and by whom,
it is executed.

And whether a Return be necessary.

3. Profits of Lands only, by *Levari Facias*.

And here of that :

What Profits shall be levied ;

And whereupon.

4. Part of the Lands, and all the Goods,
by *Elegit*.

Here of *Elegit* :

Where it lies ;

What Lands extendible ;

How the Extent shall be made ;

How return'd ;

And where a Re-extent.

5. Body, Lands, and Goods, by Extent upon a Stat. Merchant, or Stat. Staple, or a Recognizance in Nature of a Stat. Staple.

And here of these Executions.

L

What

The Analysis of the Law.

What they are ;

The Manner of *executing* the same,
*&c.*II. *Secondly*, Touching *Executions* after the
Year past ;

When the Proceeding is,

1. To revive the Judgment. And,
2. Obtain *Execution* thereof ;

By *Scire Facias* ;And here all the Learning of *Scire*
Facias's.

S E C T L I V.

Of Redress of Injuries, by Error,

VII. **L**astly, I come to *Remedies* that Per-
sons have, to be reliev'd against
those Proceedings (aforesaid,) in case they
have just Cause so to be.

And they are these, *viz.*

1. By *Writ of Error* ; to remove the Record
into a superior Court, to examine the
Errors, in case the inferior Court has
erred in Point of Proceeding, Judgment,
or Execution awarded.

And here comes in that great Title *Error*,
with its *Adjuncts* and *Appendixes*, *viz.*

1. Where it lies.
2. When it lies.
3. In what Court.
4. When 'tis a *superfedeas* &c.
5. What assignable for Error.

6. The

6. The *Process* to bring in the Party that recover'd.
 7. The Judgment therein, both,
 1. When the former is affirm'd.
 - And,
 2. When it is revers'd.
 8. Execution of Judgment upon the Affirmation or Reversal.
And here of Executions in Error.
 2. By *Writ of Attaint*, where the Jurors give a false Verdict.
And here all the Learning of *Attaints*.
 3. By *Writ of Disceit*, where the Judgment is by Default, and the Party never duly summon'd.
 4. Where the Party has lost by Default in a *Real Action*, yet has good Right, when yet by reason of his Default, he did not shew it; viz.
 1. By *Writ of Right* for him that lost by Default, or his Heir, having a *Fee-Simple*.
 2. By *Writ of Quod ei Deforceat*, if he had only an Estate for Life, or in Tail.
 3. By *Formedon in Descender, Reverter, Remainder. Vide ante.*
- And here at large the Learning of *Fauxifier de Recovery*.
5. Where the Party is put out by Execution, wherein he had no Day to plead or answer, as in Executions by *Capias, Elegit, Statute-Merchant, &c.*
By *Audita Querela*.

The Analysis of the Law.

And here of the whole Learning of
Audita Querela's.

And thus far of the *Partitions* of the *Titles*
of the *Law of England*, and the *Analysis*
thereof, in relation to *Rights*, &c. of a *Ci-*
vil Nature.

As to the *Pleas of the Crown*, and *Matters*
Criminal, that should here ensue, they are al-
ready drawn up, or perfected, by me in a
short *Tract*, Of *Pleas of the Crown*, which I
shall add to this in due *Time*.

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A N

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